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THE

WORKS

OF

CHARLES SUMNER.

Veniet fortasse aliud tempus, dignius nostro, quo, debellatis odiis, veritas triumphabit. Hoc mecum opta, lector, et vale.

LEIBNITZ.

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BENJAMIN FRANKLIN AND JOHN SLIDELL AT PARIS.

ARTICLE IN THE ATLANTIC MONTHLY, NOVEMBER, 1863.

THIS article appeared originally under the title, "Monograph from an Old Note-Book." Beyond the curiosity of the discussion was the object, at a critical moment, of contrasting the diplomatic representative of our fathers at Paris and that of Rebel Slavery, with a new appeal to France. It was in the same vein with the recent speech on Our Foreign Relations.[1]

IN a famous speech, made in the House of Lords, March 6, 1838, against the Eastern slave-trade, Lord Brougham arrests the current of his eloquence by the following illustrative diversion.

"I have often heard it disputed among critics, which of all quotations was the most appropriate, the most closely applicable to the subject-matter illustrated; *and the palm is generally awarded to that which applied to Dr. Franklin the line in Claudian,* —

'Eripuit fulmen cœlo, mox sceptra tyrannis';

yet still there is a difference of opinion, and even that citation, admirably close as it is, has rivals."[2]

The British orator errs in attributing this remarkable

[1] See, *ante*, Vol. VII. p. 327.

[2] Speeches of Henry Lord Brougham upon Questions relating to Public Rights, Duties, and Interests (Edinburgh, 1838), Vol. II. pp. 233, 234.

verse to Claudian, misled, perhaps, by reminiscence of like-sounding words by that poet, —

"Rapiat fulmen sceptrumque Typhœus." [1]

And he errs also in the quotation of the verse itself, which he fails to give with entire accuracy. And this double mistake becomes more noticeable, when it appears in the carefully prepared collection of speeches, revised at leisure, and preserved in permanent volumes.

The beauty of this verse, even in its least accurate form, will not be questioned, especially as applied to Franklin, who, before the American Revolution, in which he performed so illustrious a part, had already awakened the world's admiration by drawing the lightning from the skies. But, beyond its acknowledged beauty, this verse has an historic interest which has never been adequately appreciated. Appearing at the moment it did, it is closely associated with the acknowledgment of American Independence. Plainly interpreted, it calls George the Third "tyrant," and announces that the sceptre has been snatched from his hands. It was a happy ally to Franklin in France, and has ever since been an inspiring voice. Latterly it has been adopted by the city of Boston, and engraved on granite in letters of gold, in honor of its greatest son and citizen. It may not be entirely superfluous to recount the history of a verse which has justly attracted so much attention, and in the history of Civilization has been of more value than the whole State of South Carolina.

From its first application to Franklin, this verse has excited something more than curiosity. Lord Brougham tells us that it is often discussed in private circles.

[1] Gigantomachia, ver. 82.

There is other evidence of the interest it has created. For instance, in an early number of "Notes and Queries," is the following inquiry: —

"Can you inform me who wrote the line on Franklin,

'Eripuit cœlo fulmen, sceptrumque tyrannis'?

"HENRY H. BREEN.

"ST. LUCIA." [1]

A subsequent writer in this same work, after calling the verse "a parody" of a certain line of Antiquity, says: "I am unable, however, to say who adapted these words to Franklin's career. Was it Condorcet?" [2] Another writer in the same work says: "The inscription was written by Mirabeau." [3]

I remember well a social entertainment in Boston, where a distinguished scholar of our country,[4] in reply to an inquiry at the table, said that the verse was founded on a line from the "Astronomicon" of Manilius, which he repeated: —

"Eripuitque Jovi fulmen, viresque tonandi." [5]

John Quincy Adams, who was present, seemed to concur. Mr. Sparks, in his notes to the correspondence of Franklin, attributes to it the same origin.[6] But there are other places where its origin is traced with more precision. One of the correspondents of "Notes and Queries" says that he has read, but does not remember where, "that this line was *immediately* taken from one

[1] Notes and Queries, Vol. IV. p. 443, Dec. 6, 1851.
[2] Ibid., Vol. V. p. 17, Jan. 3, 1852.
[3] Ibid.
[4] Hon. Edward Everett.
[5] Lib. I. 104.
[6] Works of Franklin, Vol. VIII. pp. 537, 538, note.

in the 'Anti-Lucretius' of Cardinal Polignac."[1] Another correspondent shows the intermediate authority.[2] My own notes were made without any knowledge of these studies, which, while fixing its literary origin, fail to exhibit its important character, especially as illustrating an historical epoch.

The verse cannot be found in any ancient writer, — not Claudian or anybody else. It is clear that it does not come from Antiquity, unless indirectly; nor does it appear that at the time of its first production it was referred to any ancient writer. Manilius was not mentioned. It is of modern invention, and was composed after the arrival of Franklin in Paris on his eventful mission. At first it was anonymous, but was attributed sometimes to D'Alembert and sometimes to Turgot. Beyond question, it was not the production of D'Alembert, while it is found in the Works of Turgot, published after his death, in the following form: —

"Eripuit cœlo fulmen, sceptrumque tyrannis."[3]

There is no explanation by the editor of the circumstances under which the verse was written; but it is given among poetical miscellanies of the author, immediately after a translation into French of Pope's "Essay on Man," in connection with the following French composition, entitled "Verses beneath the Portrait of Benjamin Franklin": —

"Le voilà ce mortel dont l'heureuse industrie
Sut enchaîner la Foudre et lui donner des loix,

[1] Notes and Queries, Vol. V. p. 549, June 5, 1852.

[2] Ibid., Vol. V. p. 140. See, also, Ibid., Vol. V. p. 571; Vol. VI. p. 88; Dublin Review for March, 1847, p. 212, note; Quarterly Review for June, 1850, Vol. LXXXVII. p. 17.

[3] Œuvres (Paris, 1808 – 10), Tom. IX. p. 140.

Dont la sagesse active et l'éloquente voix
D'un pouvoir oppresseur affranchit sa Patrie,
Qui désarma les Dieux, qui réprime les Rois."

The single Latin verse is a marvellous substitute for these diffuse and feeble lines.

If there were any doubt upon its authorship, it would be removed by the positive statement of Condorcet, who, in his Life of Turgot, written shortly after the death of this great man, says: "There is known from Turgot but one Latin verse, designed for the portrait of Franklin"; and he gives the verse in this form: —

"Eripuit cœlo fulmen, mox sceptra tyrannis."[1]

But Sparks and Mignet,[2] and so also both the biographical dictionaries of France, — that of Michaud and that of Didot, — while ascribing it to Turgot, concur in the form already quoted from Turgot's Works, which was likewise adopted by Ginguené, the scholar who has done so much to illustrate Italian literature, on the title-page of his "Science du Bon-Homme Richard," with an abridged Life of Franklin, in 1794, and by Cabanis, who lived in such intimacy with Franklin.[3] It cannot be doubted that this was the final form the verse assumed, — as it is unquestionably the best.

This verse was no common event. It was a new expression of the French alliance, and an assurance of independence. After its appearance and general adoption, there was no retreat for France.

To appreciate its importance in marking and help-

[1] Œuvres, ed. O'Connor et Arago, (Paris, 1847,) Tom. V. p. 162.

[2] Sparks, Works of Franklin, Vol. VIII. p. 537, note; Mignet, Portraits et Notices Historiques et Littéraires (2me édit.), Tom. II. p. 449, note.

[3] Cabanis, Œuvres Posthumes, Tom. V. p. 220.

ing a great epoch, certain dates must be borne in mind. Franklin reached Paris on his mission towards the close of 1776. He had already signed the Declaration of Independence, and his present duty was to obtain the recognition of France for the new power. The very clever Madame du Deffand, in her amusing correspondence with Horace Walpole, describes him in a visit to her "with a fur cap on his head and spectacles on his nose," in the same small circle with Madame de Luxembourg, a great lady of the time, the Abbé Barthélemy, and the Duc de Choiseul, late Prime-Minister. This was on the 31st of December, 1776.[1] A pretty good beginning. More than a year of effort and anxiety ensued, brightened at last by the Burgoyne surrender at Saratoga. On the 6th of February, 1778, the work of the American Plenipotentiary was crowned by the signature of the two Treaties of Alliance and Commerce, by which France acknowledged our independence and pledged her belligerent support. On the 13th of March, one of these treaties, with a diplomatic note announcing that the Colonies were free and independent States, was communicated to the British Government, at London, which promptly encountered it by a declaration of war. On the 20th of March, Franklin was received by the King at Versailles, and this remarkable scene is described by the same feminine pen to which we are indebted for the early glimpse of him on his arrival in Paris.[2] But throughout this intervening period he had not lived unknown. Indeed, he had become at once a celebrity. Lacretelle, the eminent French historian, says: "By the effect which Franklin

[1] Letters to Horace Walpole (London, 1810), Vol. III. p. 215.
[2] Ibid., p. 348, 22 Mars, 1778.

produced in France he might have been said to have fulfilled his mission, not to a court, but to a free people. .... His virtues and renown negotiated for him."[1]

Condorcet, who was part of that intellectual society which welcomed the new Plenipotentiary, has left a record of his reception. "The celebrity of Franklin in the sciences," he says, "gave him the friendship of all who love or cultivate them, that is, of all who exert a real and durable influence upon public opinion. At his arrival he became an object of veneration to all enlightened men, and of curiosity to others. He submitted to this curiosity with the natural facility of his character, and with the conviction that he thereby served the cause of his country. It was an honor to have seen him. People repeated what they had heard him say. Every *fête* which he was willing to receive, every house where he consented to go, spread in society new admirers, *who became so many partisans of the American Revolution*.... Men whom the reading of philosophical books had secretly disposed to the love of Liberty became enthusiastic for that of a strange people. .... A general cry was soon raised in favor of the American War, and the friends of peace dared not even complain that peace was sacrificed to the cause of Liberty."[2] This is an animated picture by an eye-witness. But all authorities concur in its truthfulness. Even Capefigue, whose business is to belittle all that is truly great, and especially to efface the names associated with human liberty, while, like another Old Mortality, he furbishes the tombstones of royal mistresses, is yet constrained to attest the pop-

[1] Histoire de France pendant le Dix-huitième Siècle (5me édit.), Tom. V. pp. 84, 86.

[2] Œuvres, éd. O'Connor et Arago, Tom. III. pp. 406, 407.

ularity and influence which Franklin achieved. The critic dwells on what he styles his "Quaker garb," his "linen so white under his brown clothes," and also the elaborate art of the philosopher, who understood France and knew well "that a popular man became soon more powerful than power itself"; but he cannot deny that the philosopher "fulfilled his duties with great superiority," or that he became at once famous.[1] The rosewater biographer of Diane de Poitiers, Madame de Pompadour, and Madame du Barry would naturally disparage the representative of Science and Revolution.

From other quarters proceeds concurring testimony. A correspondent at Paris wrote: "He now engrosses the whole attention of the public. People of all ranks pay their court to him. His affability and complaisant behavior have gained him the esteem of the greatest people in this kingdom."[2] Another wrote a little later: "When Dr. Franklin appears abroad, it is more like a public than a private gentleman, and the curiosity of the people to see him is so great that he may be said to be followed by a genteel mob."[3] His mysterious power was asserted by an American newspaper, in announcing his intention "shortly to produce an electrical machine of such wonderful force, that, instead of giving a slight stroke to the elbows of fifty or a hundred thousand men who are joined hand in hand, it will give a violent shock even to Nature herself, so as to disunite kingdoms, join islands to continents, and render men of the same nation strangers and enemies to each other."[4] The Lon-

[1] Capefigue, Louis XVI., Tom. II. pp. 12, 13, 42, 49, 50.

[2] Moore's Diary of the American Revolution, Vol. I. p. 387, note, February 1, 1777.

[3] Ibid., pp. 503, 504, October 2, 1777.

[4] New Jersey Gazette, December 31, 1777: Ibid.

don paper which spoke of him as "the old fox" acknowledged his power.[1]

The influence of Franklin was great beyond that of any American in Europe since. His presence gave character to the cause he represented, and was a standing recommendation of our country. Jefferson, who served two years with him at Paris, describes his influence there, and, in reply to the charge of subservience, says, in pregnant words: "He possessed the confidence of that Government in the highest degree, insomuch that it may truly be said that they were more under his influence than he under theirs. The fact is, that his temper was so amiable and conciliatory, his conduct so rational, never urging impossibilities, or even things unreasonably inconvenient to them, in short, so moderate and attentive to their difficulties, as well as our own, that what his enemies called subserviency I saw was only that reasonable disposition which, sensible that advantages are not all to be on one side, yielding what is just and liberal, is the more certain of obtaining liberality and justice."[2] It is easy to see how such a character obtained from the French people the fame of snatching the sceptre from the tyrant.

The arrival of Franklin was followed very soon by the departure of the youthful Lafayette, who crossed the sea to offer his inspired sword to the service of American Liberty. Our cause was now widely known. In the thronged *cafés* and the places of public resort it was discussed with sympathy and admiration.[3] And so com-

[1] Moore's Diary of the American Revolution, Vol. II. p. 5, January 3, 1778.

[2] Anecdotes of Dr. Franklin: Jefferson's Writings, Vol. VIII. p. 498, note.

[3] Mignet, Portraits et Notices Historiques et Littéraires (2me édit.), Tom. II. p. 400.

pletely was Franklin recognized as the representative of new ideas, that the Emperor Joseph the Second of Austria, professed reformer as he was, visiting France under the travelling name of Count Falkenstein, is reported to have remarked, when asked to see him, "My business is to be a royalist," — thus doing homage to the real character of him in whom the Republic was personified.

Franklin became at once, by natural attraction, the welcome guest of that brilliant company of philosophers who exercised such influence over the eighteenth century. The "Encyclopédie" was their work, and they were masters at the Academy. He was received into their guild. At the famous table of the Baron D'Holbach, where twice a week, Sunday and Thursday, at dinner, lasting from two till seven o'clock, were gathered the wits of the time, he found a hospitable chair. But he was most at home with Madame Helvétius, the widow of the rich and handsome philosopher, whose name, derived from Switzerland, is now almost unknown. At her house he met in social familiarity D'Alembert, Diderot, D'Holbach, Morellet, Cabanis, and Condorcet, with their compeers. There, also, was Turgot, greatest of all. There was another, famous in some respects as any of these, but leading a different life, whom Franklin saw often, — Caron Beaumarchais, author already of the "Barbier de Séville," as he was afterwards of the "Mariage de Figaro," who, turning aside from an unsurpassed success at the theatre, exerted his peculiar genius to enlist the French Government on the side of the struggling Colonies, predicted their triumph, and at last, under the assumed name of a mercantile house, became the agent of the Comte de Vergennes in furnishing clandestine

supplies of arms before the recognition of independence. It is supposed that through this popular dramatist Franklin maintained communications with the French Government until the mask was thrown aside.[1]

Beyond all doubt, Turgot is one of the most remarkable intelligences that France has produced. He was by nature a philosopher and a reformer; but he was also a statesman, with a seat in the Cabinet of Louis the Sixteenth, first as Minister of the Marine, and then as Comptroller-General of the Finances. Perhaps no minister ever studied more completely the good of the people. His administration was one constant benefaction. But he was too good for the age, — or, rather, the age was not good enough for him. The King was induced to part with him, forgetting his earlier words, "You and I are the only two persons who really love the people." This was some time in May, 1776; so that Franklin, on his arrival, found this eminent Frenchman free from all constraints of ministerial position. The character of Turgot shows how naturally he sympathized with the Colonies struggling for independence, especially when represented by a person like Franklin. In a prize essay of his youth, written in 1750, when he was only twenty-three years of age, he foretold the American Revolution. These are his remarkable words: —

"Colonies are like fruits, which hold to the tree only till their maturity. Having become sufficient to themselves, they do that which Carthage did, *that which America will one day do.*"[2]

[1] La Gazette Secrète, 15 Jan., 1777. Capefigue, Louis XVI., Tom. II. p. 15.

[2] Discours sur les Progrès successifs de l'Esprit Humain: Œuvres, Tom. II. p. 66.

One of his last acts before leaving the Ministry was to prepare a memoir on the American War, for the information and at the request of the King, where he says, that "the idea of the absolute separation of the Colonies and the mother country seems infinitely probable,—that, when the independence of the Colonies shall be entire and acknowledged by the English themselves, there will be a total revolution in the political and commercial relations of Europe and America,—and that all the parent states will be forced to abandon all empire over their colonies, to leave them entire liberty of commerce with all nations, and to be content in sharing with others this liberty, and in preserving with their colonies the bonds of amity and fraternity."[1] This memoir of the French statesman bears date the 6th of April, 1776, nearly three months before the Declaration of Independence.

Leaving the Ministry, Turgot devoted himself to literature, science, and charity, translating Odes of Horace and portions of Virgil, studying geometry with Bossut, chemistry with Lavoisier, astronomy with Rochon, and interesting himself in everything by which human welfare is advanced. Such a character, with such experience of government, and the prophet of American independence, was naturally prepared to welcome Franklin, not only as philosopher, but also as statesman.

The classical welcome was partially anticipated,—at least in an unsuccessful attempt. Baron Grimm, in that interesting and instructive "Correspondance," prepared originally for the advantage of distant courts, but now constituting a literary and social monument of the pe-

[1] Mémoire sur la manière dont la France et l'Espagne devoient envisager les suites de la querelle entre la Grande-Bretagne et ses Colonies, 6 Avril, 1776: Œuvres, Tom. VIII. p. 496.

riod, mentions, under date of October, 1777, that the following French verses were made for the portrait of Franklin by Cochin, engraved by St. Aubin: —

"C'est l'honneur et l'appui du nouvel hémisphère;
Les flots de l'Océan s'abaissent à sa voix;
Il réprime ou dirige à son gré le tonnerre:
Qui désarme les dieux, peut-il craindre les rois?" [1]

These lines seem to contain the very idea in the verse of Turgot. But they were suppressed at the time by the censor, on the ground that they were "blasphemous," although it is added in a note that "they concerned only the King of England." Was it that the negotiations with Franklin were not yet sufficiently advanced? And here mark the dates.

It was only after the communication to Great Britain of the Treaty of Alliance and the reception of Franklin at Versailles, that the seal seems to have been broken. Baron Grimm, in his "Correspondance," under date of April, 1778, makes the following entry.

"A very beautiful Latin verse has been made for the portrait of Dr. Franklin, —

'Eripuit cœlo fulmen, sceptrumque tyrannis.'

It is a happy imitation of a verse of the 'Anti-Lucretius,' —

'Eripuitque Jovi fulmen, Phœboque sagittas.'" [2]

Here is the earliest notice of this verse, authenticating its origin. Nothing further is said of the "Anti-Lucretius"; for in that day it was familiar to every lettered person. But I shall speak of it before I close.

Only a few days later the verse appears in the correspondence of Madame D'Épinay, whose intimate rela-

[1] Correspondance (2de édit.), Tom. X. p. 96.
[2] Ibid., p. 197.

tions with Baron Grimm — the subject of curiosity and scandal — will explain her early knowledge of it. She records it in a letter to the very remarkable Italian Abbé Galiani, under date of May 3, 1778. And she proceeds to give a translation in French verse, which she says "D'Alembert made the other morning on waking."[1] Galiani, who was himself a master of Latin versification, and followed closely the fortunes of America, must have enjoyed the tribute. In a letter written shortly afterwards, he enters into all the grandeur of the occasion. "You have," says he, "at this hour decided the greatest revolution of the globe, — the question whether America shall rule Europe, or Europe shall continue to rule America. I would wager in favor of America."[2] In these words the Neapolitan said as much as Turgot.

I cannot quote Galiani without adding that nobody saw America with more prophetic eye than this inspired Pulcinello of Naples. As far back as May 18, 1776, several weeks even before the Declaration of Independence, and much longer before it was known in Europe, he wrote: "The epoch is come for the total fall of Europe and for transmigration to America. . . . . Do not, then, buy your house in the Chaussée d'Antin, but at Philadelphia. The misfortune for me is that there are no abbeys in America."[3] Once a favorite in the very circle where Franklin was welcomed, he left Paris for Italy before the arrival of the negotiator, so that he

[1] Mémoires et Correspondance de Madame D'Épinay (3me édit.), Tom. III. p. 431.

[2] Lettre à Madame D'Épinay, 25 Juillet, 1778: Correspondance, Tom. II. p. 280.

[3] Ibid., p. 203. See, also, Grimm, Correspondance, Oct., 1776, Tom. IX. p. 285.

knew the tribute only through a faithful correspondence.

Shortly afterwards the verse appears in a different scene. It had reached the *salons* of Madame Doublet, whence it was transferred to the "Mémoires Secrets" of Bachaumont, under date of June 8, 1778, as "a very beautiful verse, quite proper to characterize M. Franklin and to serve as an inscription for his portrait."[1] These Memoirs, as is well known, are the record of news and town-talk gathered in the circle of that venerable Egeria of gossip;[2] and here is evidence of the publicity this welcome had promptly obtained.

The verse was now fairly launched. War was flagrant between France and Great Britain. No longer was there any reason why the new alliance between France and the United States should not be placed under the auspices of genius, and why the same hand that had snatched the lightning from the skies should not have the fame of snatching the sceptre from King George the Third. The time for free speech had come. It was no longer "blasphemous."

It will be observed that these records of this verse fail to mention the immediate author. Was he unknown at the time? or did the fact that he was recently a Cabinet Minister induce him to hide behind a mask? Turgot was a master of epigram, — as witness the terrible lines on Frederick of Prussia;[3] but he was very

[1] Tom. XII. p. 9 (Londres, 1780).

[2] The dictionaries of Michaud and Didot concur in the date of her death; but there is reason to suppose that they are both mistaken.

[3] "Haï du Dieu d'Amour, cher au Dieu des Combats,
Il inonda de sang l'Europe et sa patrie:
Cent mille hommes par lui reçurent le trépas,
Et pas un n'en reçut la vie."

Biographie Universelle, Tom. XLVII. p. 67, note, art. TURGOT.

prudent in conduct. "Nobody," said Voltaire, "so skilful to launch the shaft without showing the hand." There is a letter from no less a person than D'Alembert, which reveals something of the "filing" which the verse underwent, and something of the persons consulted. Unhappily, the letter is without date; nor does it appear to whom it was addressed, except that the "*cher confrère*" seems to imply that it was to a brother of the Academy. This letter is found in a work now known to have been the compilation of the Marquis Gaëtan de la Rochefoucauld,[1] entitled "Mémoires de Condorcet sur la Révolution Française, extraits de sa Correspondance et de celles de ses Amis," and is introduced by the following words from the Marquis: —

"It is known how Franklin was fêted when he came to Paris, because he was the representative of a republic. The philosophers, especially, received him with enthusiasm. It may be said, among other things, that D'Alembert lost his sleep; and we are going to prove it by a letter which he wrote, while racking his brain to versify in honor of Franklin."

The letter is then given as follows: —

"FRIDAY MORNING.

"MY DEAR COLLEAGUE, — . . . . You are acquainted with the Franklin verse, —

'Eripuit cœlo fulmen, *mox sceptra* tyrannis.'

You should surely cause it to be put in the Paris paper, if it is not there already.

"I am inclined to agree with La Harpe that *sceptrumque* is better: first, because *mox sceptra* is a little hard, and then

[1] See Quérard, La France Littéraire, art. LA ROCHEFOUCAULD-LIANCOURT.

because *mox*, according to the dictionary of Gesner, who adduces examples, signifies equally *statim* or *deinde*, which makes an ambiguity, *mox eripuit* or *mox eripiet*.

"Be that as it may, here is how I have attempted to translate this verse for the portrait of Franklin: —

'Tu vois le sage courageux
Dont l'heureux et mâle génie
Arracha le tonnerre aux dieux
Et le sceptre à la tyrannie.'

If you find these verses sufficiently tolerable, so that people will not laugh at me, you can have them put into the Paris paper, even with my name. I shall honor myself in rendering this homage to Franklin, but on condition once more that you find the verses *printable*. As I make little pretension on account of them, I shall be perfectly content, if you reject them as bad.

"The third verse might be put, *A ravi le tonnerre aux cieux* or *aux dieux*. I should prefer the other; but you shall choose."[1]

From this letter it appears that the critical judgment of La Harpe, confirmed by D'Alembert, sided for *sceptrumque* as better than *mox sceptra*.

The verse of Turgot was not alone in its testimony. An incident precisely contemporaneous shows how completely France had fallen under the fascination of the American cause. Voltaire, the acknowledged chief of French literature in the brilliant eighteenth century, after many years of busy exile at Ferney, in the neighborhood of Geneva, where he had wielded his far-reaching sceptre, was induced in old age to visit Paris once again before he died. He left his Swiss retreat on the 6th of February, 1778, the very day on which Franklin signed the alliance with France, and, after a journey

[1] Mémoires de Condorcet, Tom. I. pp. 165–167.

which resembled the progress of a sovereign, reached Paris on the 10th of February. He was at once surrounded by the homage of all most illustrious in literature and science, while the Theatre, grateful for his contributions, vied with the Academy. There were two characters on whom the patriarch, as he was fondly called, lavished a homage of his own. He had already addressed to Turgot a most remarkable epistle in verse, the mood of which may be seen in its title, "Épître à un Homme"; but on seeing the discarded statesman, who had been so true to benevolent ideas, he came forward to meet him, saying, with his whole soul, "Let me kiss the hand which signed the salvation of the people." The scene with Franklin was more touching still. Voltaire began in English, which he had spoken early in life, but, having lost the habit, soon changed to French, saying that he "could not resist the desire of speaking for one moment the language of Franklin." The latter had brought with him his grandson, for whom he asked a benediction. "God and Liberty," said Voltaire, putting his hands upon the head of the child; "this is the only benediction proper for the grandson of Franklin." A few weeks afterward, at a public session of the Academy, they were placed side by side, when, amidst the applause of the enlightened company, the two old men rose and embraced. The political triumphs of Franklin and the dramatic triumphs of Voltaire caused the exclamation, "Solon and Sophocles embrace!" It was more than this. It was France and America embracing beneath the benediction of "God and Liberty." Only a month later Voltaire died. But the alliance with France had received new assurance, and the cause of American independence an immutable impulse.

Turgot did not live to enjoy the final triumph to which he had given such remarkable expression. He died March 20, 1781, several months before that "crowning mercy," the capture of Cornwallis, and nearly two years before the Provisional Articles of Peace, by which the Colonies were recognized as free and independent States. But his attachment to Franklin was one of the enjoyments of his latter years.[1] Besides the verse to which so much reference has been made, there is an interesting incident attesting the communion of ideas between them, if not the direct influence of Turgot. Captain Cook, the eminent navigator, who "steered Britain's oak into a world unknown," was in distant seas on a voyage of discovery. Such an enterprise naturally interested Franklin, and, in the spirit of a refined humanity, he sought to save it from the chances of war. Accordingly, he issued a passport, addressed "To all captains and commanders of armed ships acting by commission from the Congress of the United States of America, now in war with Great Britain," where, after setting forth the nature of the voyage of the English navigator, he proceeded to say: "This is most earnestly to recommend to every one of you, that, in case the said ship, which is now expected to be soon in the European seas on her return, should happen to fall into your hands, you would not consider her as an enemy, nor suffer any plunder to be made of the effects contained in her, nor obstruct her immediate return to England by detaining her or sending her into any other part of Europe or to America, but that you would treat the said Captain Cook and his people with all civility and kindness, affording them, as common

[1] Œuvres de Turgot, Tom. I. p. 416.

friends to mankind, all the assistance in your power which they may happen to stand in need of."[1] This document bears date March 10, 1779. But Turgot had anticipated Franklin. At the first menace of war he had submitted a memoir to the French Government, on which it was ordered that Captain Cook should not be treated as an enemy, but as a benefactor of all European nations.[2] Here was a triumph of Civilization by which we, too, have been gainers; for such an example is universal and immortal in influence.

There is yet another circumstance which should be mentioned as revealing an identity of sympathies in these two eminent persons. Each sought to marry Madame Helvétius: Turgot early in life, while she was still Mademoiselle Ligniville, belonging to a family of twenty-one children, from a château in Lorraine, and a niece of Madame de Graffigny, author of the "Peruvian Letters"; Franklin in his old age, while a welcome guest in the intellectual company which this widowed lady continued to gather about her at Auteuil, in the neighborhood of Paris, and not far from his own house at Passy. Throughout his stay in France he continued in unbroken relations with this circle, dining with it very often, and adding much to its gayety, while Madame Helvétius, with her friends, dined with him once a week. It was with tears in his eyes that he parted from her, whom he never expected to see again in this life; and on reaching his American home he addressed her in words of touching tenderness: "I stretch out my arms towards you, notwithstanding the immensity of

[1] Franklin's Works, ed. Sparks, Vol. V. pp. 123, 124.

[2] Œuvres de Turgot, Tom. I. p. 414; Tom. IX. p. 416. Œuvres de Condorcet, Tom. V. p. 163.

the seas which separate us, while I wait the heavenly kiss which I firmly trust one day to give you."[1]

In the permanent group about Madame Helvétius were Cabanis and Morellet, both living for many years under her hospitable roof. To the former we are indebted for the interesting extract last quoted. The intimacy with Franklin is attested in other ways. Nobody who has visited the Imperial[2] Library at Paris can forget his very pleasant autograph note in French concerning Madame Helvétius, exhibited in the same case with an autograph note of Henry the Fourth to Gabrielle d'Estrées.

Another glimpse is furnished by Mrs. Adams, who, in her family correspondence, reports a scene at the house of Franklin. "The Doctor entered at one door, she [Madame Helvétius] at the other; upon which she ran forward to him, caught him by the hand, 'Hélas, Franklin!'—then gave him a double kiss, one upon each cheek, and another upon his forehead. . . . . She carried on the chief of the conversation at dinner, frequently locking her hand into the Doctor's." Franklin spoke of her as "a genuine Frenchwoman, wholly free from affectation or stiffness of behavior, and one of the best women in the world."[3] Madame Helvétius died at Auteuil, August 12, 1800, aged eighty-one, and, according to her desire, was buried in her garden. A few years later the same house became the home of Ben-

[1] Cabanis, Notice sur Benjamin Franklin: Œuvres Posthumes, Tom. V. p. 261. Mignet, Portraits et Notices (2me édit.), Tom. II. p. 442. See, also, Morellet, Mémoires, Tom. I. p. 291.

[2] The triumph of the Republic since this article was written makes this magnificent library National instead of Imperial.

[3] Letter to Miss Lucy Cranch, September 5, 1784: Letters of Mrs. Adams (2d edit.), Vol. II. pp. 55, 56.

jamin Thompson, Count Rumford, who died there, and was buried in the neighboring cemetery.

But the story of the verse is not yet finished. And here it mingles with the history of Franklin in Paris, constituting an episode of the American Revolution. The verse was written for a portrait. And now that the costly first step had been taken, the portrait of Franklin was seen everywhere, — in painting, in sculpture, and in engraving. I have counted in the superb collection of the Bibliothèque Impériale, at Paris, forty-seven engraved heads of him. At the royal exhibition of pictures the republican portrait found place, and the name of Franklin was printed at length in the catalogue, — a circumstance which did not pass unobserved at the time; for the "Espion Anglais," in recording it, treats it as "announcing that he began to come out of his obscurity."[1] The same curious authority, describing a festival at Marseilles, says, under date of March 20, 1779, "I was struck, on entering the hall, to observe a crowd of portraits representing the insurgents; but that of M. Franklin especially drew my attention, on account of the device, '*Eripuit cœlo fulmen, sceptrumque tyrannis.*' This was inscribed recently, and *every one admired the sublime truth.*"[2] Thus completely was France, not merely in its social centre, where fashion gives the law, but in its distant borders, pledged to the cause of which Franklin was the representative.

As in halls of science and popular resorts, so was our Plenipotentiary even in the palace of princes. The biographer of the Prince de Condé dwells with admiration upon the illustrious character, who, during the great

[1] Tom. II. p. 83. See, also, p. 337.
[2] Tom. II. p. 465.

debate and the negotiations that ensued, had fixed the regards of Paris, of Versailles, of the whole kingdom indeed, — although in simple and farmer-like exterior, so unlike those gilded plenipotentiaries to whom France was accustomed, — and he recounts, most sympathetically, that the Prince, after an interview of two hours, declared that "Franklin appeared to him above even his reputation." [1] And here we encounter again the unwilling testimony of Capefigue, who says that he was followed everywhere, taking possession of "hearts and minds," and that "his picture, in his simple Quaker dress, was suspended at the hearth of the poor and in the boudoir of the fashionable," [2] — all of which is in harmony with the more sympathetic record of Lacretelle, who says that "portraits of Franklin were to be seen everywhere, with this inscription, *which the Court itself found just and sublime, 'Eripuit cœlo fulmen, sceptrumque tyrannis.'*" [3]

Fragonard, the King's painter, united in this adulation. A French paper describes the artist as displaying his utmost efforts "in an elegant picture dedicated to the genius of Franklin, who is represented with one hand opposing the ægis of Minerva to the thunderbolt, which he first knew how to fix by his conductors, and with the other commanding the God of War to fight against Avarice and Tyranny, whilst America, nobly reclining upon him, and holding in her hand the fasces, true emblem of the union of the American States, looks

[1] Chambelland, Vie du Prince de Bourbon-Condé, Tom. I. p. 376.

[2] Capefigue, Louis XVI., Tom. II. p. 49.

[3] Lacretelle, Histoire de France pendant le 18me Siècle (2me édit.), Tom. V. p. 85. The historian errs in putting this success in 1777, before the date of the Treaty; and he errs also with regard to the Court, if he meant to embrace the King and Queen.

down with tranquillity on her defeated enemies." It is then said, that "the painter, in this picture, most beautifully expressed the idea of the Latin verse which has been so justly applied to M. Franklin." The enthusiastic journalist, not content with the picture and the verse, proceeded to claim him as of French ancestry. "Franklin appears rather to be of French than of English origin. It is certain that the name of Franklin, or Franquelin, is very common in Picardy, especially in the districts of Vimeux and Ponthieu. It is very probable that one of the Doctor's ancestors was an inhabitant of this country, and went over to England with the fleet of Jean de Biencourt, or that which was fitted out by the nobility of this province."[1] The story of Homer seems revived.

The tribute of Madame d'Houdetot was most peculiar. This lady, one of the riddles of French society in the eighteenth century, whom Rousseau depicted in a passage of surpassing fervor and made the inspiration of his "Nouvelle Éloïse," received Franklin at her château, near Paris, in a brilliant circle, with banquet and verses in his honor. The famous guest, at his arrival, and then at dinner, with every glass of wine was saluted by a new verse, the whole ending with the ascription of Turgot.[2] Whether to admire or pity the philosopher on this occasion is the question.

In the minds of Frenchmen Franklin was associated always with this verse; but such association was no common fame. The Marquis de Chastellux, while on board the French frigate in the Chesapeake Bay, on

[1] Gazette d'Amiens, Avril, 1780: Moore's Diary of the American Revolution, Vol. II. p. 283

[2] The account of this unique *fête*, with the verses, was reprinted in America, and is in the collection of the Zenger Club, of New York. Parton, Life and Times of Benjamin Franklin, Vol. II. pp. 430 - 434.

which he was about to leave, after those travels which did so much to make our country known in Europe, addressed a communication to Professor Madison, of Virginia, on the fine arts in America, where he recommends for all the great towns a portrait of Franklin, "with the Latin verse inscribed in France below his portrait." [1] Thus, while teaching our fathers the homage due to the great citizen, the generous Frenchman did not forget the testimony of his countryman.

French invention stopped not with Turgot. Other verses were pitched on the same key. An engraving of Franklin by Chevillet, after a portrait by Duplessis, has this tribute: —

"Honneur du Nouveau Monde et de l'Humanité,
Ce Sage aimable et vrai les guide et les éclaire;
Comme un autre Mentor, il cache à l'œil vulgaire,
Sous les traits d'un mortel, une Divinité."

Under another engraving, by F. N. Martinet, where Franklin is seated in a chair, are these lines: —

"Il a ravi le feu des cieux,
Il fait fleurir les arts en des climats sauvages;
L'Amérique le place à la tête des sages,
La Grèce l'auroit mis au nombre de ses Dieux."

It was at Court, even in the palatial precincts of Versailles, that the portrait and its famous inscription had their most remarkable experience. Of this there is authentic account in the Memoirs of Marie Antoinette by her attendant, Madame Campan. This feminine chronicler relates that Franklin appeared at court in the dress of an American farmer. His flat hair without powder, his round hat, his coat of brown cloth contrasted with the bespangled and embroidered dresses, the pow-

[1] Chastellux, Travels in North America, Vol. II. p. 372, January 12, 1783.

dered and perfumed coiffures of the courtiers. The novelty charmed the lively imagination of the French ladies. Elegant *fêtes* were given to the man who was said to unite in himself the renown of one of the greatest of natural philosophers with "those patriotic virtues which had made him embrace the noble part of Apostle of Liberty." Madame Campan records that she assisted at one of these *fêtes*, where the most beautiful among three hundred ladies was designated to place a crown of laurel upon the white head of the American philosopher, and two kisses upon the cheeks of the old man. Even in the palace, at the exposition of the Sèvres porcelain, the medallion of Franklin, with the legend, "*Eripuit cœlo*," etc., was sold directly under the eyes of the King. Madame Campan adds, however, that the King avoided expressing himself on this enthusiasm, which, "without doubt, his sound sense led him to blame." But an incident, called "a pleasantry," which has remained quite unknown, goes beyond speech in explaining the secret sentiments of Louis the Sixteenth. The Comtesse Diane de Polignac, devoted to Marie Antoinette, shared warmly the "infatuation" with regard to Franklin. The King observed it. But here the story shall be told in the language of the eminent lady who records it: "Il fit faire à la manufacture de Sèvres un vase de nuit, au fond duquel était placé le médaillon avec la légende *si fort en vogue*, et l'envoya en présent d'étrennes à la Comtesse Diane."[1] Such was the exceptional treatment of Franklin, and of the inscription in his honor which was "so much in vogue." Giving to this incident its natural interpretation, it is impossible to resist the conclusion,

[1] Mémoires sur la Vie privée de Marie Antoinette, par Madame Campan, Tom. I. p. 234.

that the French people, and not the King, sanctioned American independence.

The conduct of the Queen on this occasion is not recorded, although we are told by the same communicative chronicler, who had been her Majesty's companion, that she did not hesitate to express herself more openly than the King on the part taken by France in favor of American independence, to which she was constantly opposed. A letter from Marie Antoinette, addressed to Madame de Polignac, under date of April 9, 1787, declares unavailing regret in memorable words: "The time of illusions is past, and to-day we pay dear on account of our infatuation and enthusiasm for the American War."[1] Evidently, Marie Antoinette, like her brother Joseph, thought that her "business was to be a royalist."

But the name of Franklin triumphed in France. So long as his residence continued there he was received with honor; and when, after the achievement of independence, and the final fulfilment of all that was declared in the verse of Turgot, he undertook to return home, the Queen — who had looked with so little favor upon the cause he so grandly represented — sent a litter to receive his sick body and carry him gently to the sea. As the great Revolution began to show itself, his name was hailed with new honor; and this was natural; for the French Revolution was an outbreak of the spirit that had risen to welcome him. In snatching the sceptre from a tyrant he had given a lesson to France. His death, when at last it occurred, was the occasion of a magnificent eulogy from Mirabeau, who, borrowing the

[1] Bulletin de l'Alliance des Arts, 10 Octobre, 1843. See, also, Goncourt, Histoire de Marie Antoinette, p. 221.

idea of Turgot, exclaimed from the tribune of the National Assembly, "Antiquity would have raised altars to the powerful genius, who, to the benefit of mankind, embracing in his thought both heaven and earth, *could subdue lightning and tyrants.*" On his motion, France went into mourning for Franklin.[1] His bust became a favorite ornament, and, during the festival of Liberty, it was carried, with the busts of Sidney, Rousseau, and Voltaire, before the people to receive their veneration.[2] A little later, the eminent medical character, Cabanis, who had lived in intimate association with Franklin, added his testimony, saying, that the enfranchisement of the United States was in many respects his work, and that the Revolution, the most important to the happiness of men which had then been accomplished on earth, united with one of the most brilliant discoveries of physical science to consecrate his memory; and he concludes by quoting the verse of Turgot.[3] Long afterwards, his last surviving companion in the cheerful circle of Madame Helvétius, still loyal to the idea of Turgot, hailed him as "that great man who placed his country in the number of independent states, and made one of the most important discoveries of the age."[4]

It is time to look at this verse in its literary relations, from which I have been diverted by its commanding

[1] Grimm, Correspondance, Tom. XVI. pp. 427, 428.

[2] Louis Blanc, Histoire de la Révolution Française, Tom. VI. p. 316.

[3] Notice sur Benjamin Franklin: Œuvres Posthumes, Tom. V. p. 220.

[4] Morellet, Mémoires, Tom. I. p. 290. Nothing but Franklin's eminence could have obtained the place he has in the spiteful work, "Histoire d'un Pou Français, ou l'Espion d'une nouvelle Espèce, tant en France qu'en Angleterre, contenant les Portraits des Personnages intéressans de ces deux Royaumes," which appeared at Paris in 1781. See Chapters VIII. and XIV.

import as a political event; but this naturally enhances the interest in its origin.

The poem which furnished the prototype of the famous verse was "Anti-Lucretius, sive de Deo et Natura," by the Cardinal Melchior de Polignac. Its author was of that patrician house associated so closely with Marie Antoinette in the earlier Revolution, and with Charles the Tenth in the later Revolution, having its cradle in the mountains of Auvergne, near the cradle of Lafayette, and its present tomb in the historic cemetery of Picpus, near the tomb of Lafayette, so that these two great names, representing opposite ideas, begin and end side by side. He was not merely author, but statesman and diplomatist also, under Louis the Fourteenth and Fifteenth. Through his diplomacy a French prince was elected King of Poland. He represented France at the Peace of Utrecht, where he bore himself very proudly towards the Dutch. By the nomination of the Pretender, at that time in France, he obtained the hat of a cardinal. At Rome he was a favorite, and also at Versailles, with some interruptions. His personal appearance, his distinguished manners, his genius, and his accomplishments, all commended him. Literary honors were superadded to political and ecclesiastical. He succeeded to the chair of Bossuet at the Academy. But he was not without the vicissitudes of political life. Falling into disgrace at court, he was banished to the abbacy of Bonport. There the lettered Prince of the Church occupied himself with a refutation of Lucretius, in Latin verse.

The origin of the poem is not without interest. Meeting Bayle in Holland, the Frenchman found the indefatigable skeptic most persistently citing Lucretius, in

whose elaborate verse the atheistic materialism of Epicurus is developed and exalted. Others had answered the philosopher directly; but the indignant Christian was moved to answer the poet through whom the dangerous system was proclaimed. His poem was, therefore, a vindication of God and religion, in direct response to a master-poem of antiquity in which these are assailed. The attempt was lofty, especially when the champion adopted the language of Lucretius. Perhaps no writer of Latin verse since the admired Sannazaro, found equal success. Even before its publication, in 1747, it was read at court, and was admired in the princely circle of Sceaux. It appeared in elegant editions, was translated into French prose by Bougainville, and into French verse by Jeanty-Laurans, also most successfully into Italian verse by Ricci. At the latter part of the last century, when Franklin reached Paris, it was hardly less known in literary circles than a volume of Grote's History in our own day. Voltaire, the contemporary arbiter of literary fame, regarding the author only on the side of literature, said of him, in his "Temple du Goût": —

> "Le Cardinal, oracle de la France,
> . . . . .
> Réunissant Virgile avec Platon,
> *Vengeur du Ciel et vainqueur de Lucrèce.*" [1]

The last line of this remarkable eulogy has a movement and balance not unlike the Latin verse of Turgot, or that which suggested it in the poem of Polignac; but the praise it so pointedly offers attests the fame of the author. Nor was this praise limited to the "fine frenzy" of verse. The "Anti-Lucretius" was gravely pro-

[1] Le Temple du Goût, 1, 11, 12: Œuvres (édit. 1784), Tom. XII. p. 141.

nounced the "rival of one of the greatest poems of ancient Rome," — "with verses as flowing as Ovid, sometimes approaching the elegant simplicity of Horace and sometimes the nobleness of Virgil," — and then again, with a philosophy and a poetry combined which "would not be disavowed either by Descartes or by Virgil."[1]

Turning now to the poem itself, we see how completely the verse of Turgot finds its prototype. Epicurus is indignantly described as denying to the gods all power, and declaring man independent, so as to act for himself; and here the poet says: "Assailing the thundering temples of heaven, *he snatched the lightning from Jove and the arrows from Apollo,* and, liberating the human race, bade it dare all things": —

> "Cœli et tonitralia templa lacessens,
> *Eripuit fulmenque Jovi, Phœboque sagittas;*
> Et mortale manumittens genus, omnia jussit
> Audere."[2]

To deny the power of God, and to declare independence of His commands, which the poet here holds up to judgment, is very unlike the life of Franklin, all whose service was in obedience to God's laws, whether in snatching the lightning from the skies or the sceptre from tyrants; and yet it is evident that the verse picturing Epicurus in his impiety suggested the image of the American plenipotentiary in his double labors of science and statesmanship.

The present story will not be complete without further reference to the poem of Antiquity supposed to have suggested the verse of Turgot, and which doubt-

[1] L'Anti-Lucrèce, traduit par M de Bougainville, (Paris, 1754,) Épistre Dédicatoire, Discours Préliminaire, pp. 2, 16, 91.

[2] Anti-Lucretius, Lib. I. 95 - 98.

less did suggest the verse of the "Anti-Lucretius." Manilius is a poet little known. It is difficult to say when he lived or what he was. He is sometimes imagined to have lived under Augustus, and sometimes under Theodosius. He is sometimes imagined to have been a Roman slave, and sometimes a Roman senator. His poem, under the name of "Astronomicon," is a treatise on astronomy in verse, recounting the origin of the material universe, exhibiting the relations of the heavenly bodies, and vindicating this ancient science. While describing the growth of knowledge, gradually mastering Nature, the poet says, —

"Eripuitque Jovi fulmen, viresque tonandi."[1]

The meaning of this line is seen in the context, which, for plainness as well as curiosity, I quote from a metrical version of the first book, entitled "The Sphere of Marcus Manilius made an English Poem, by Edward Sherburne, Esquire," and dedicated to Charles the Second: —

"Nor put they to their curious search an end,
Till reason had scaled heaven, thence viewed this round,
And Nature latent in its causes found:
Why thunder does the suffering clouds assail;
Why winter's snow 's more soft than summer's hail;
Whence earthquakes come, and subterranean fires;
Why showers descend; what force the wind inspires:
From error thus she wondering minds uncharmed,
Unsceptred Jove, the Thunderer disarmed."

Enough has been said on the question of origin; but there is yet one other aspect of the story.

The verse was hardly divulged when it became the occasion of various efforts in the way of translation.

[1] Lib. I. v. 104. *Tonandi* is sometimes changed to *tonantis*, and also *tonanti*.

Turgot had already done it into French; so had D'Alembert. M. Nogaret wrote to Franklin, inclosing an attempted translation, and says in his letter: "The French have done their best to translate this Latin verse, where justice is done you in so few words. They have appeared as jealous of transporting this eulogy into their language as they are of possessing you. But nobody has succeeded, and I think nobody will succeed." He then quotes a translation which he thinks defective, although it appeared in the "Almanach des Muses" as the best:—

> "Cet homme que tu vois, sublime en tous les tems,
> Dérobe aux dieux la foudre et le sceptre aux tyrans."[1]

To this communication Dr. Franklin made the following reply.

"PASSY, 8 March, 1781.

"SIR,—I received the letter you have done me the honor of writing to me the 2d instant, wherein, after overwhelming me with a flood of compliments, which I can never hope to merit, you request my opinion of your translation of a Latin verse that has been applied to me. If I were, which I really am not, sufficiently skilled in your excellent language to be a proper judge of its poesy, the supposition of my being the subject must restrain me from giving any opinion on that line, except that it ascribes too much to me, especially in what relates to the tyrant, — the Revolution having been the work of many able and brave men, wherein it is sufficient honor for me, if I am allowed a small share. I am much obliged by the favorable sentiments you are pleased to entertain of me. . . . .

"With regard, I have the honor to be, Sir, &c.,

"B. FRANKLIN."[2]

[1] Works of Franklin, ed. Sparks, Vol. VIII. p. 538, note.
[2] Ibid., p. 537.

In acknowledgment, M. Nogaret says: "Paris is pleased with the translation of your '*Eripuit*,' and your portrait, as I had foreseen, makes the fortune of the engraver." [1] But it does not appear to which translation he refers.

Here is an attempt preserved in the Works of Turgot:—

"Il a, par ses travaux toujours plus étonnans,
Ravi la foudre aux Dieux et le sceptre aux Tyrans." [2]

Mr. Sparks found among Franklin's papers the following paraphrastic version:—

"Franklin sut arrêter la foudre dans les airs,
Et c'est le moindre bien qu'il fit à sa patrie;
Au milieu de climats divers,
Où dominait la tyrannie,
Il fit régner les arts, les mœurs, et le génie;
Et voilà le héros que j'offre à l'univers." [3]

Nor should I omit a translation into English by Mr. Elphinston:—

"He snatched the bolt from Heaven's avenging hand,
Disarmed and drove the tyrant from the land." [4]

A song, by the Abbé Morellet, written for one of the dinners of Madame Helvétius, adopts, in some of its verses, the idea of Turgot.

"Comme un aigle audacieux,
Il a volé jusqu'aux cieux,
Et dérobé le tonnerre
Dont ils effrayaient la terre,
Heureux larcin
De l'habile Benjamin.

"L'Américain indompté
Recouvre sa liberté;

[1] Works of Franklin, ed. Sparks, Vol. VIII. p. 539, note.
[2] Œuvres de Turgot, Tom. IX. p. 140.
[3] Works of Franklin, ed. Sparks, Vol. VIII. p 539, note.
[4] Ibid.

Et ce généreux ouvrage,
Autre exploit de notre sage,
Est mis à fin
Par Louis et Benjamin."

These verses are characteristic of that intimate circle. *L'habile Benjamin!*

Nothing with regard to Franklin is more curious than the Memoirs of the long-lived Abbé,[1] including especially the humorous engraving illustrating the benevolence of Nature in the construction of the elbow, from a design by the lightning-and-sceptre-seizer. In some copies this engraving is wanting. Franklin is represented as fond especially of Scottish airs and *chansons à boire*, which he accompanied sometimes on the harmonica, "an instrument, as is known, of his invention." The scandalous whispers with regard to him, strangely adopted by a German traveller in our country,[2] had no better authority, probably, than these hilarities and the well-known "infatuation" of the court ladies. But the good Abbé, who saw him so freely with the friends he loved, dwells on his exquisite social qualities, his perfect good-nature, his simplicity of manners, his uprightness of soul, which made itself felt in the smallest things, his extreme tolerance, and, above all, his sweet serenity, changing easily into gayety; and he describes the great void made in that circle when he left for America.

In concluding this sketch, I wish to say that the lit-

[1] Mémoires de l'Abbé Morellet, Ch. XV. Tom. I. pp. 286 seqq. This chapter was translated some years ago for a Philadelphia periodical, "The Bizarre," by William Duane, great-grandson of Franklin, and is preserved by Parton, in his "Life and Times of Benjamin Franklin," Vol. II. pp. 422–429.

[2] Julius, Nordamerikas Sittliche Zustände, Band I. p. 98.

erary associations of the subject did not tempt me; but I could not resist the inducement to present in proper light an interesting incident, which is truly comprehended only when seen in its political relations. Its history, even in details, becomes important, so that the verse which occupied so much attention should be recognized not only in its scholarly fascination, but in its wide-spread influence among the learned and even the fashionable in Paris and throughout France, binding this great nation by an unchangeable vow to the support of American Liberty. Words are sometimes deeds; but never were words so completely deeds as those with which Turgot welcomed Franklin. The memory of that welcome cannot be forgotten in America. Can it ever be forgotten in France?

AND now the country is amazed by the report that the original welcome of France to America, and the inspired welcome of Turgot to Franklin, are forgotten by the France of this day, or, rather let me say, forgotten by the Emperor, whose memory for the time is the memory of France. It is said that Louis Napoleon is concerting alliance with the Rebel Slavemongers of our country, founded on the recognition of their independence, so that they may take their place as a new power in the Family of Nations. Indeed, we have been told, through the columns of the official organ, the "Moniteur," that he wishes to do this thing. Can he imagine that he follows the great example of the last century?

What madness!

The two cases are in conspicuous contrast, — as opposite as the poles, as unlike as Liberty and Slavery.

The struggle for American independence was for Lib-

erty, and was elevated throughout by this holy cause. But the struggle for Slavemonger independence is necessarily and plainly for Slavery, and is degraded throughout by the unutterable vileness of its undisguised pretensions.

The earlier struggle, adopted by the enlightened genius of France, was solemnly placed under the benediction of "God and Liberty." The present struggle, happily thus far discarded by that same enlightened genius, can have no other benediction than "Satan and Slavery."

The earlier struggle was to snatch the sceptre from a kingly tyrant. The present struggle is to put whips in the hands of Rebel Slavemongers with which *to compel work without wages*, thus giving wicked power to vulgar tyrants without number.

The earlier struggle was fitly pictured by the welcome of Turgot to Franklin. But another feeling must be found, and other words invented, to portray the struggle now seeking the protection of France.

The earlier struggle was grandly represented by Benjamin Franklin, who was already known by a sublime discovery in science. The present struggle is characteristically represented by John Slidell,[1] whose great fame is from electioneering frauds to control a Presidential

[1] Mr. Slidell never returned to the United States. On his death, in Europe, July, 1871, the London "Daily Telegraph" of August 2d recognized the parallel with Franklin. After remarking that "during the whole of 1862, and the first six months of 1863, it was the general belief of the most far-seeing statesmen in Europe — among them Lord Palmerston and the ex-Emperor of the French — that the Confederate States would succeed in establishing their independence," this journal proceeds to say: "Mr. Mason and Mr. Slidell were therefore invested, during these brief and halcyon days of Secession's prosperity, with something of the diplomatic influence which between 1776 and 1783 attached to Benjamin Franklin, when accredited by our insurgent North American Colonies to the French Court."

election; so that his character is fitly drawn, when it is said that he thrust fraudulent votes into the ballot-box, and whips into the hands of taskmasters.

The earlier struggle was predicted by Turgot, who said, that, in the course of Nature, colonies must drop from the parent stem, like ripe fruit. But where is the Turgot who has predicted, that, in the course of Nature, the great Republic must be broken to found a new power on the corner-stone of Slavery?

The earlier struggle gathered about it the sympathy of the learned, the good, and the wise, while the people of France rose up to call it blessed. The present struggle can expect nothing but detestation from all not lost to duty and honor, while the people of France must cover it with curses.

The earlier struggle enjoyed the favor of France, whether in assemblies of learning or of fashion, in spite of its King. It remains to be seen if the present struggle must not ignobly fail in France, still mindful of its early vows, in spite of its Emperor.

Where duty and honor are so plain, it is painful to think that even for a moment there can be hesitation.

Alas for France!

VICTORY AND PEACE THROUGH EMANCIPATION.

LETTER TO COLORED CITIZENS IN NEW YORK, CELEBRATING THE ANNIVERSARY OF THE PROCLAMATION, DECEMBER 18, 1863.

WASHINGTON, December 18, 1863.

GENTLEMEN, — It is not in my power to be present at your festival in honor of the Proclamation of Emancipation. But, wherever I may be, I shall celebrate it in my heart.

That Proclamation was the key to open the gates of victory and peace. Without it victory would have been doubtful, and peace impossible. And now both are certain.

Accept my best wishes, and believe me, Gentlemen,

Faithfully yours,

CHARLES SUMNER.

THE COMMITTEE, &c.

THE MAYFLOWER AND THE SLAVE SHIP.

LETTER TO THE NEW ENGLAND SOCIETY AT NEW YORK, DECEMBER 21, 1863.

AT the anniversary of the Society speeches were made by Rev. Dr. Hitchcock, Mayor Opdyke, General Dix, General Burnside, General Sickles, Senator Hale, Rev. Henry Ward Beecher, and James T. Brady, Esq. Among the letters read was one from Mr. Sumner.

SENATE CHAMBER, December 21, 1863.

MY DEAR SIR, — I had counted on partaking of your patriotic, invigorating, and gratifying festival, where New-Englanders away from home annually meet for fellowship; but the Senate is in session, and you know it is not a habit with me to leave my post. I must put off to another occasion the pleasure I had promised myself.

Never before, since the Mayflower landed its precious cargo, have New-Englanders had more reason for pride and gratulation than now. We are told that a little leaven shall leaven the whole lump, and that saying is verified. The principles and ideas which constitute the strength and glory of New England have spread against opposition and contumely, till at last their influence is visible in a regenerated country, — tried, it may be, by murderous conspiracy and rebellion, but aroused and stimulated to the manly support of Human Rights.

Amid all the sorrows of a conflict without precedent,

let us hold fast to the consolation that it is in simple obedience to the spirit in which New England was founded that we are now resisting the bloody efforts to raise a wicked power on the corner-stone of Human Slavery, and that as New-Englanders we could not do otherwise.

If such a wicked power can be raised on this continent, the Mayflower traversed its wintry sea in vain.

We remember, too, that another ship crossed at the same time, buffeting the same sea. It was a Dutch ship, with twenty slaves, who were landed at Jamestown, in Virginia, and became the fatal seed of that Slavery which has threatened to overshadow the land. Thus the same ocean, in the same year, bore to the Western Continent the Pilgrim Fathers, consecrated to Human Liberty, and also a cargo of slaves. In the holds of those two ships were the germs of the present direful war, and the simple question now is between the Mayflower and the slave ship. Who that has not forgotten God can doubt the result? The Mayflower must prevail.

Believe me, with much regard, my dear Sir,

Very faithfully yours,

CHARLES SUMNER.

ELLIOT C. COWDIN, Esq.

COMMUTATION FOR THE DRAFT: DIFFERENCE BETWEEN RICH AND POOR.

REMARKS IN THE SENATE, ON AN AMENDMENT MOVED TO THE ENROLMENT BILL, JANUARY 8, 12, AND JUNE 20, 1864, AND FEBRUARY 7, 1865.

JANUARY 8, 1864, the Senate having under consideration a bill to amend an act entitled "An Act for enrolling and calling out the national forces and for other purposes," approved March 3, 1863, Mr. Sumner moved an amendment, afterwards modified as follows.

"That, in addition to the substitute furnished by a drafted person, or, where no substitute is furnished, then in addition to the sum fixed by the Secretary of War for the procuration of a substitute, every such drafted person shall, before his discharge from the draft, be held to contribute a certain proportion, in the nature of a tithe, of his annual gains, profits, or income, whether derived from any kind of property, dividends, salary, or from any profession, trade, or employment whatever, according to the following rates, to wit: on all income over one thousand dollars and not over two thousand dollars, five per centum; over two thousand dollars and not over five thousand dollars, ten per centum; and on all income over five thousand dollars, twenty per centum. And it shall be the duty of every such person, seeking to be discharged, to make return, either by himself or his guardian, to the provost-marshal of his district, of the amount of his income, according to the requirements of the Act to provide internal revenue, of July 1, 1862. And it is further provided, That the contribution thus made shall be employed by the Secretary of War, in his discretion, to promote enlistments, or for the benefit of enlisted men."

January 8th, Mr. Sumner explained his amendment, remarking as follows.

MR. PRESIDENT, — I presume that I do not exaggerate, if I say, that, of all the questions connected with this bill, that relating to commutation for

service is the most difficult and the most sensitive. It is the question which has most occupied the attention of the country. It has been most discussed in the newspapers, and also in conversation. I presume it is the ground of objection most often made against the draft.

Now I think all Senators will unite in any proposition that promises in any way to smooth these difficulties, — in short, to popularize a part of the bill which has been open to so much objection among the people.

January 12th, in the course of debate, Mr. Sumner replied to Mr. Sherman, of Ohio.

THE Senator from Ohio, not contenting himself with opposing the amendment, introduced other and extraneous matter, which has been under discussion since, diverting our minds from the original proposition. But if I can have his attention for a few minutes, it seems to me — I do not know — I may even satisfy him that his argument was not well founded.

If I understand the Senator, he objects to my proposition on the ground, in the first place, that it is an unusual tax. Sir, what is the draft but a tax? The draft compels all persons drafted to contribute strength, muscle, life, to the defence of the Republic. That, if I am not mistaken, is the highest tax the country can impose. But, still further, what is the commutation which the statute positively requires but a tax? If, then, there be anything in the argument of the Senator, both the draft itself and the commutation of three hundred dollars are a tax, and both are therefore objectionable. But neither the one nor the other is a tax in a received sense, because neither the one nor the other is an imposition

for revenue; and I ask the attention of the Senator to the distinction, neither the one nor the other is an imposition for revenue. Not on any such ground do I present this amendment, but simply and distinctly on the duty of equalizing this burden, that it shall bear, so far as we can make it, with something like equality upon the rich and the poor. Now I have to say that at present the burden is not equalized, and that it does not bear with anything like equality upon the rich and the poor. You make the poor man pay three hundred dollars; but the rich man pays no more. Is this equality?

But the Senator went further. Not satisfied with objecting to the amendment on the ground that it was a tax, he complained that it was an exorbitant tax, and asked me whether in all history I could point to any instance of a tax of thirty per cent on income. It seems to me that it should be the pride of our country, at this moment and on an occasion like this, that it is not to be deterred by history from an endeavor to equalize a burden upon the rich and the poor. Because other nations have not undertaken to equalize this burden, is that a reason why we should not set the example? But is the tax exorbitant? I will read it.

"On all income over six hundred dollars and not over two thousand dollars, ten per cent; over two thousand dollars and not over five thousand dollars, twenty per cent; and on all income over five thousand dollars, thirty per cent."[1]

Now the Senator complains of the thirty per cent, that is, thirty per cent on an income over five thousand

[1] Afterwards modified according to the text in the Introduction to these Remarks. *Ante*, p. 42.

dollars. Suppose a person drafted with an income over five thousand dollars, I put it to the Senator, what sum would be too great for him to pay for exemption, carrying with it, as the draft does, exposure to death, disease, wounds, with the absolute consumption of time during the period of one, two, or three years, according to the duration of the service? Is thirty per cent on an income above five thousand dollars too much for the exemption? Is it exorbitant? Is that the estimate the Senator puts upon such exposure? He requires three hundred dollars from the poor man who has no income, but he thinks it exorbitant to require thirty per cent on an income over five thousand dollars. Sir, I do not think that even in the requirement of this amendment there is equality. If any objection can be brought forward, it is that it is too lenient, that it does not go far enough.

I am sure, eminent as the Senator is, and justly representing his own State, that he does not represent on this question every citizen of that State. I have in my hand a letter, received since this amendment was first mentioned, from a most respectable citizen of Cincinnati, and with your permission I will read three or four sentences from it. I read simply to show how this proposition strikes citizens at a distance, yet having the same interest in it that we have.

"Permit a stranger to address a few words to you, expressive of approbation of your bill" —

He calls it a bill, when it is only an amendment.

— "providing for a revision of the Enrolment Act, so as to afford a sliding scale of commutation for the draft, the object being to rate commutation according to the means

of the drafted individual. I quote from telegrams of this morning's news. In my humble opinion you have hit the nail on the head. I think this is the only method to equalize the burden, and satisfy all claims for justice and equitable dealing. When any fixed sum is indicated as the commutation fee to exempt from actual military duty, it needs but little reflection to see that it indirectly imposes a premium upon property while it taxes the poor."

Then he goes on to suppose a case, somewhat at length, quite elaborately indeed, between two citizens of Cincinnati, neighbors, whom he minutely describes, and finally winds up that part of his communication by saying, —

"Suppose the latter person [whom he calls John Smith] is drafted. Why, three hundred dollars is no more to him than a three-penny loaf to the other person. Am I not right, that a fixed sum for exemption imposes a tax upon honest poverty and a premium upon wealth?"

This intelligent constituent of the Senator objects to his whole theory as a tax upon honest poverty and a premium upon wealth. The Senator opposes my amendment as a tax upon wealth. Call it, if you please, a tax upon wealth. The time has come when it should be levied. But I put aside such language. I put aside the idea, except in the general sense, that the draft itself is a tax, and the amendment simply aims to equalize that tax.

The amendment was lost, — Yeas 15, Nays 25.

January 15th, Mr. Sumner moved his amendment as an additional section. Again it was lost, — Yeas 16, Nays 28.

June 20th, the Senate having under consideration a bill to prohibit the discharge of persons from liability to military duty by reason of

the payment of money, Mr. Sumner moved again the former amendment, with the further proviso : —

"That the contributions thus made shall be employed by the Secretary of War as a fund for bounties to be paid to the men actually drafted and mustered into the service under any call subsequent to the date of this Act, whenever they shall be honorably discharged, or, in the case of death, to the widow and minor children of any such man, according to rules and regulations established by the War Department."

Mr. Sumner again vindicated his amendment. In the course of his remarks, he said : —

WHEN a citizen is drafted as a soldier, and the question arises of his ransom by a pecuniary contribution, there is no element of equity which is not shocked, so my conscience tells me, if you fail to regulate the requirement of money according to the wealth of the individual. What is there which a man will not give for his life? What is there which a man, having the means, and indisposed to military exposure, will not pay for his exemption? And yet, Sir, by the law as it now stands, you compel the poor to pay the same as the rich. The rich man is drafted, and he pays three hundred dollars, which to him is nothing; he puts his hand into his purse, as you put yours into your pocket to find the change for a newspaper; whereas the poor man, perhaps, is driven to sell all that he has to save himself for his family. Sir, is that just? To my mind it is not.

. . . . . .

Suppose the Senator himself were drafted; indisposed, as he probably would be, to the toils of war, what is there that he would not consent to pay for exemption? To him, under such circumstances, the required amount would be nothing; and yet to the poor man it is everything. In short, there are many who have it not; and there are many, who, by calling upon their friends,

and exhausting every resource within their reach, are not able to command that small sum; others, perhaps, just able to command it, are compelled to burden their families and deny comfort to wife and child.

Now, Sir, the rich man is under no such obligation. If he be drafted under existing laws, he finds his substitute, or he tosses into the Treasury the required amount; he draws his check, and it is all over. Sir, there is no equity in the law as it stands. The proposition I present has in it two elements: the first is that it seeks justice; the second is that it provides a fund out of which bounties may be distributed by the Secretary of War among the men drafted and mustered into service. Here is another attraction to the service, — or, if it be not another attraction, it is something which will mitigate its hardships. The soldier, while on the field of battle, or on his weary march, will bear in mind, that, when the time of honorable discharge at last arrives, or should he be taken away by death, then, for the benefit of his wife and minor children, he may look to the fund from these contributions for a bounty which shall be to him or to them something in the way of support. Therefore in the pending amendment is an inducement which all confess is needed to carry forward our enrolments, and also something more to mitigate them.

On motion of Mr. Grimes, of Iowa, the bill was recommitted to the Committee on Military Affairs, who reported it without amendment.

February 7, 1865, the Senate having under consideration another bill in addition to the several acts for enrolling and calling out the national forces and for other purposes, Mr. Sumner seized the occasion to renew his amendment, and again vindicated it. In reply to Mr. Cowan, of Pennsylvania, he said: —

THE Senator from Pennsylvania opposes my proposition, and treats the Senate to a very elaborate disquisition on political economy in general, on the depreciation of the currency in particular, also on taxation, and still further on salaries.

Now, Sir, admitting all the honorable Senator has so ably said as perfectly true, that it is according to just principles of political economy and the experience of the world (for I am not disposed to go at this moment into that discussion with the learned Senator), the proposition that I have the honor to make is not touched by a hair's breadth. My proposition involves no question of political economy, no question of the currency, or of taxation, or of salaries. It has nothing to do with any of these matters. Its single and exclusive object is to equalize the burden of the draft. There is no political economy in it. There is nothing but justice. Therefore I propose that every drafted person, before discharge from the draft, shall be held to contribute not merely a substitute, but a certain tithe of his annual gains.

I am not tenacious with regard to the percentage. If Senators suggest a different rate, I shall be perfectly willing to yield. The proposition is the best that, under the circumstances, I can devise. Other Senators may improve it; it is open to improvement; but I submit that the criticism of the Senator from Pennsylvania does not touch it in the least. The proposition still stands, in its original character, as a measure which, if adopted, would equalize this burden of the draft. It would, if I may so express myself, temper this terrible draft to the poor of the country. It would make them see that legislators here, while imposing it, thought of

the poor, and took such steps as they could to the end that this burden should not press upon them with undue severity, — so that it might, to a certain extent, be equalized upon them and upon the rich. I know full well that this cannot be accomplished completely; but, Sir, an endeavor in such direction is something. I think that the Senate must make the endeavor. In the name of the poor, who are liable to be enrolled, I ask it. Let it appear to the country, that, while requiring this draft, we recognize inequalities of condition, — that some are poor and some rich, and that the same sum ought not to be exacted from all alike.

The proposition was again lost, — Yeas 8, Nays 30. The war was near its close, and the Senate was not disposed at that late day to enter upon a change.

SPECIAL COMMITTEE ON SLAVERY AND FREEDMEN.

RESOLUTION IN THE SENATE, JANUARY 13, 1864.

MR. SUMNER submitted the following resolution, which was considered by unanimous consent and adopted.

RESOLVED, That a Special Committee of seven be appointed by the Chair to take into consideration all propositions and papers concerning Slavery and the treatment of Freedmen, with leave to report by bill or otherwise.

January 14th, the Vice-President appointed on this Special Committee, Mr. Sumner, Mr. Howard of Michigan, Mr. Carlile of Virginia, Mr. Pomeroy of Kansas, Mr. Buckalew of Pennsylvania, Mr. Brown of Missouri, and Mr. Conness of California. Reports from this Committee will appear in subsequent pages.

FOUNDATION OF THE FREE PUBLIC LIBRARY IN BOSTON.

LETTER TO A COMMITTEE IN BOSTON, JANUARY 20, 1864.

IN 1850, Hon. John P. Bigelow, Mayor of Boston, declined to receive a costly vase as a tribute to the faithful discharge of official duty, and suggested that the funds obtained for that purpose be devoted to founding a Free Public Library in Boston. Accordingly, one thousand dollars was paid to the city in the name of Mr. Bigelow, and this was the first contribution to this important object. There was a dinner at the Tremont House to commemorate this benefaction, with speeches and letters. Among the latter was the following.

SENATE CHAMBER, January 20, 1864.

MY DEAR SIR, — It is too late for me to send anything for your meeting to-morrow evening; but it is not too late for me to express the gratitude and admiration with which at the time I witnessed the appropriation of that first thousand dollars to a Free Public Library in Boston. The money collected as a testimony to a favorite mayor became the corner-stone of a favorite institution, destined to be cherished with pride so long as our beloved city endures.

Believe me, dear Sir, faithfully yours,

CHARLES SUMNER.

DR. DAVID K. HITCHCOCK.

LOYALTY IN THE SENATE: THE IRON-CLAD OATH FOR SENATORS.

SPEECH IN THE SENATE, ON A NEW RULE REQUIRING THE OATH OF LOYALTY FOR SENATORS, JANUARY 25, 1864.

BY an Act of Congress of July 2, 1862, a new oath of office was prescribed in the following terms: —

"That hereafter every person elected or appointed to any office of honor or profit under the Government of the United States, either in the civil, military, or naval departments of the public service, excepting the President of the United States, shall, before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof, take and subscribe the following oath or affirmation."

Then follows the oath or affirmation, as follows: —

"I, A. B., do solemnly swear (or affirm) that I have never voluntarily borne arms against the United States since I have been a citizen thereof; that I have voluntarily given no aid, countenance, counsel, or encouragement to persons engaged in armed hostility thereto; that I have neither sought nor accepted nor attempted to exercise the functions of any office whatever, under any authority or pretended authority in hostility to the United States; that I have not yielded a voluntary support to any pretended government, authority, power, or constitution, within the United States, hostile or inimical thereto. And I do further swear (or affirm) that to the best of my knowledge and ability I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

The Act then provides: —

"Which said oath, so taken and signed, shall be preserved among the files

of the Court, House of Congress, or Department to which the said office may appertain."[1]

This oath was popularly known as "the Iron-Clad Oath."

On the organization of the Senate, March 4, 1863, being the first organization after the statute requiring the oath, it became necessary to consider its applicability to the Senate. Debate ensued, which can be understood only by a preliminary explanation.

The Senate was organized, in the absence of the Vice-President, by the choice of Hon. Solomon Foot, of Vermont, as President *pro tempore*. The oath to support the Constitution was administered to him by Mr. Foster, of Connecticut, but the additional oath was omitted. The President *pro tempore* then proceeded to say: —

"Senators elect and Senators whose term commences under a reëlection at this time *will receive the oath of office in the order in which their names will be called by the Secretary*"

The Secretary then called the names of a long list of Senators, who came forward and took the customary oath. But the President *pro tempore* did not offer to administer the additional oath; nor, at the time of qualification, was anything said with regard to it. After the conclusion of the ceremony, Mr. Trumbull, of Illinois, said: —

"I desire to call the attention of the President of the Senate, and of the Senate itself, to an Act of Congress approved 2d July, 1862."

Then, reading the Act, he added: —

"I do not know that any motion in regard to it is necessary, further than calling the attention of the presiding officer and of the Senate to the law."

The President *pro tempore* said: —

"The Chair presumes it is sufficient to call the attention of Senators to that duty, and that that duty will be performed as required by law."

Nothing, however, was done by the Chair or by Senators.

The next day, 5th March, two other Senators, Mr. Hendricks and Mr. Sprague, came forward to be qualified. The Chair proceeded to administer to these Senators the usual oath to support the Constitution, but did not administer the additional oath, and these Senators took their seats. Shortly afterwards, during the session of that day, on a call of the yeas and nays, all these Senators were called, and answered to their names.

[1] Statutes at Large, Vol. XII. p. 502.

Immediately after this call, Mr. Sumner moved an additional rule of the Senate, requiring that the oath or affirmation prescribed by Act of Congress of July 2, 1862, should be taken and subscribed by every Senator in open Senate before entering upon his duties.

On the next day, 6th of March, Mr. Bayard, of Delaware, who had been absent before, came forward to be qualified. The Chair, as in the other cases, administered the oath to support the Constitution, but omitted the additional oath, and Mr. Bayard took his seat. Afterwards, on this day, Mr. Sumner called up the proposed rule for consideration, and objected to an executive session until the question of the rule was settled, as follows.

"Here is a statute of Congress, and the question is, whether the Senate is going to set an example of obedience to it or of disobedience; that is all..... If the Senate now choose to go into executive session, they choose to enter upon most important duties in disregard of an Act of Congress which they have assisted in putting upon the statute-book."

On coming out of executive session, which was ordered, the Senate proceeded with the consideration of the proposed rule, when Mr. Sumner spoke in vindication of it, concluding as follows.

"And now, Sir, as I conclude, let me say that I desire to take and subscribe the new oath in open Senate, that I may in all respects qualify myself for the discharge of my duties as a Senator. Others will do as they please, or as the Senate shall require. But I hope that I may appeal to the Chair to administer that oath to myself, or to direct that it shall be administered. With the expression of this desire I take my seat."

The President *pro tempore* made no offer to administer the oath, but said simply: —

"The subject is under debate."

The debate was continued until the Senator from Illinois [Mr. TRUMBULL] proposed that the Chair should proceed to administer the oath, while Mr. Sumner expressed a hope that the Chair would consent to administer the oath to him.

Shortly afterwards the President *pro tempore* said: —

"The Chair proposes now to take and subscribe this oath, in pursuance of the law of 2d July last, and, that being done, the Chair will administer the oath *to such members as will voluntarily take it.*"

The oath was then administered to Mr. Foot by Mr. Foster. Resuming the chair, the President *pro tempore* then said: —

"The Chair will now direct the Clerk to call, in alphabetical order, the names of all Senators who have been elected or reëlected since the 2d July,

1862, that being the day of the approval of the Act; and *such Senators present*, whose names shall be called, *as choose to do so*, will come forward to the Secretary's desk and receive the oath of office administered by the Chair, *after which they will have an opportunity to subscribe the oath.*"

The Senators present, whose names were called, some of them after delay, came forward and took the oath; and then, at the suggestion of the Chair, Mr. Sumner withdrew the resolution. The Senator from Delaware [Mr. BAYARD] was not then present.

Before withdrawing the resolution, Mr. Sumner, in reply to Mr. Reverdy Johnson, of Maryland, again vindicated the proposed rule, insisting that the statute was applicable to Senators as "civil officers," concluding as follows.

IT is our duty to guard the loyalty of this Chamber. In requiring that a person shall purge himself with regard to the past, we simply take a new assurance of fidelity for the present. Others may think that Jefferson Davis, Robert Toombs, or Judah Benjamin may resume his seat in this body, on taking a simple oath to support the Constitution. I do not think so; and I gladly seize the earliest opportunity, since the commentary of the Senator from Maryland, to declare my conviction that no person, whose loyalty is not manifest to the Senate, can be allowed to approach your desk and take the oath of a Senator. The Senate must shut the door upon him. This is not the first time that I have made this declaration: nor have I contented myself with making the declaration; I have argued it. Nothing is clearer than this: a traitor cannot be a member of the Senate. But a person who cannot take this oath, retroactive though it be, must have been a traitor. Once a traitor, always a traitor, unless where changed by pardon or amnesty.

I know not what changes may be required by changing events. For myself, I shall always welcome every

act of just clemency or condonation. But for the present the statute is wise and conservative. It only remains that we should stand by it.

At the next session of Congress Mr. Sumner returned to this question. December 17, 1863, he submitted a resolution proposing a new rule.

"*Resolved*, That the following be added to the rules of the Senate: —

"The oath or affirmation prescribed by Act of Congress of July 2, 1862, to be taken and subscribed before entering upon the duties of office, shall be taken and subscribed by every Senator in open Senate before entering upon his duties. It shall also be taken and subscribed in the same way by the Secretary of the Senate; but the other officers of the Senate may take and subscribe it in the office of the Secretary."

December 18th, the resolution came up for consideration, when Mr. Saulsbury, of Delaware, moved as a substitute that the Judiciary Committee be directed to inquire whether Senators and Representatives are included within the provisions of the Act prescribing the oath, and whether the Act is constitutional. Subsequently, he moved that the whole subject, including the resolution and the substitute, be referred to the Judiciary Committee, which, after debate, was rejected, — Yeas 15, Nays 26. The debate was continued, in the course of which Mr. Bayard, of Delaware, Mr. Reverdy Johnson, of Maryland, and Mr. Collamer, of Vermont, spoke at length.

January 25, 1864, Mr. Sumner spoke as follows.

MR. PRESIDENT, — There is a time for all things; but there are times when certain things are out of place; and this principle is especially applicable to the present debate. The question is on the adoption of a rule of the Senate to carry out an existing statute. It is not on the passage of the statute, or on its proposed repeal, but it is simply on its recognition as an existing statute, and the enforcement of its plain requirement. Considering the simplicity of the question, well may we be astonished at much that has been intruded into this debate.

The Senate is a branch of the legislative power, in conjunction with the House of Representatives and the President. Neither alone can make or unmake a law. The concurrence of all three is essential, whether in making or unmaking. So long as the law exists, there is no difference between the obligations of the Senate and the obligations of the humblest citizen, except, perhaps, that the Senate, which helped to make the law, is bound to set an example of obedience beyond any citizen.

Therefore I put aside, as entirely irrelevant, much that we have heard against the proposed rule. This is not the time to say that the oath is unconstitutional, or that it is *ex post facto*. These are considerations properly arising on the passage of the statute, or on a proposition for its repeal. The Senator from Delaware [Mr. BAYARD] and the Senator from Maryland [Mr. JOHNSON], who have argued these topics so exhaustively, were either too late or too early. The statute is already the law of the land, and there is no bill pending for its repeal.

On a former occasion I vindicated the constitutionality of the statute, and I now willingly leave that topic to the judgment of Senators, enlightened by the wisdom of the Senator from Vermont [Mr. COLLAMER], whose argument has not been answered. But I repeat that this objection is utterly out of place at this moment.

A Senator over the way [Mr. HENDRICKS] has gone so far as to introduce my course on a former occasion as an apology for not taking the oath.[1] Because I de-

[1] Only a few days before, Mr. Davis, of Kentucky, had touched the same key. After alluding to the aid supplied by the President in enforcing the Fugitive Slave Act, he said: "It matters not who did the deed. It was a noble one, and I only wish the Senator from Massachusetts could even approximate to the true loyalty of such deeds." MR. SUMNER. "I hope I

nounced an infamous statute, which was a scandal to civilization, as unconstitutional and utterly unworthy the support of virtuous citizens, it is argued that the Slave-Drivers, then in power, were more lenient to me than we are now to them. In other words, the Slave-Drivers required of me an oath to support a statute which I abhorred, and therefore we are wrong in requiring the proposed oath. But this argument confounds two cases which are wide apart as the poles. While denouncing an outrageous statute, and refusing to play the part of slave-hunter, I never joined in rebellion against my country, or uttered one word except in loyalty. But here are persons with bloody hands, in battle array, striking at all we hold dear, — or others who have acted with them. Such persons will be justly brought to the test of an oath, and they can claim no immunity from the example of those patriot citizens who, recognizing the crime of Slavery, refused to become in any way its tools.

And another Senator [Mr. JOHNSON] has taken this occasion to arraign me for certain opinions on another question, and he complained that I place them under the protection of a judgment of the Supreme Court. This is not the time for the discussion of "Reconstruction." It has nothing to do with the matter before the Senate. I may think that the Government of the United States has *belligerent rights*, as well as *the right of sovereignty*, over the Rebel States, — that it is especially the duty of Congress to take care that these rights are so

never shall." MR. DAVIS. "Yes, Sir; and yet you advance to that seat [the seat of the President of the Senate], and, with that treason in your heart and upon your lips, you take the oath to support the Constitution of the United States." — *Congressional Globe*, 38th Cong. 1st Sess., p. 179, January 13, 1864.

exercised as to crush the Rebellion, and to prevent its breaking out again, — and that, to this end, Congress must take all possible bonds for the future. These opinions, which the Senator chose to characterize harshly, may be wrong, but they have nothing to do with the business in hand. At a proper time I shall be ready to defend them. At present I choose not to be diverted from the issue before us.

Putting aside irrelevant questions, and presenting the single point in issue, the case becomes too plain for argument. It is simply this: Will the Senate obey an existing statute? But here we must consider the meaning of the statute.

That the Senate will openly refuse obedience to an existing statute, recently enacted, in support of loyalty, is not to be supposed without impeachment of the loyalty of the Senate. Only because the question of obedience has been complicated with other questions has there been for a moment any doubt on this head. Clearly, the Senate will not disobey an existing statute. It is, then, on the statute alone, and nothing else, that any question can arise.

And here I ask leave to recall the Senate from the learned commentary and elaborate diversion of the Senator from Delaware. The actual question is one which may be treated without learning and without effort. It arises on the following words of the statute: —

"Hereafter every person *elected* or appointed to any *office* of honor or profit under the Government of the United States, *either in the civil, military, or naval departments of the public service*, excepting the President of the United States, shall, before entering upon the duties of *such office*, and before being entitled to any of the salary or other emol-

uments thereof, take and subscribe the following oath or affirmation [*here follows the oath*]; which said oath, so taken and signed, shall be preserved among the files of the Court, *House of Congress*, or Department to which the said office may appertain." [1]

It cannot fail to be observed here that the language is plain rather than technical. Every person "elected" or "appointed" to any "office" in the "*civil*, military, or naval departments of the public service" must take the oath. What words could be broader than "departments" and "public service"?

Obviously, and beyond all question, a Senator is "elected." Therefore on this point there is no question.

The inquiry recurs, Is a Senator an "officer" in the "civil department of the public service"?

Is he an "officer"?

Is he in the "civil department"?

To raise these questions seems absurd. But I have not raised them. This is done by others. You might as well raise the question, if a man is a creature, and belongs to the human family.

Look now at these questions in their order.

1. Is a Senator an "officer"? Here please to consult the dictionary. I turn to Webster.

"OFFICE. — *Offices* are civil, judicial, ministerial, executive, *legislative*, political, municipal, diplomatic, military, ecclesiastical, &c."

Thus, plainly, offices are *legislative*. But why summon the dictionary? And yet the zeal of the other side leaves no alternative.

[1] Statutes at Large, Vol. XII. p. 502.

Not content with the dictionary, I call attention to the use of the word in other authoritative places, — and pardon me, if I begin with the Constitution of Massachusetts, written originally by John Adams.

In the Bill of Rights of this Constitution it is declared: —

"All power residing originally in the people, and being derived from them, the several magistrates and *officers* of government, vested with authority, whether *legislative*, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."[1]

Members of the *Legislature* are classed among *officers*, and thus this word received its interpretation.

In another part of the same Constitution it is provided: —

"Any person chosen Governor, Lieutenant-Governor, Councillor, *Senator*, or *Representative*, and accepting the *trust*, shall, before he proceed to execute the duties of his *place* or *office*, make and subscribe the following declaration."[2]

Here the *place* or *trust* of a *Senator* or *Representative* is called an *office*. And this same use of these terms, as synonymous, and applicable to the post of *Senator* or *Representative*, is continued: —

"Every person chosen to either of the places or *offices* aforesaid [meaning the *offices* of Governor, Lieutenant-Governor, Councillor, *Senator*, or *Representative*] . . . . shall, before he enters on the discharge of the business of his place or *office*, take and subscribe,"[3] &c.

The authority of New Hampshire is like that of Massachusetts. Her Constitution declares: —

[1] Art. V. [2] Ch. VI. § 1. [3] Ibid.

"All power residing originally in, and being derived from, the people, all the magistrates and *officers* of government are their substitutes and agents, and at all times accountable to them." [1]

Here the word "officers" obviously means the *substitutes* and *agents* of the people. But who are substitutes and agents of the people more than *Senators?*

Then again, in the same Constitution, it is declared: —

"No *office* or place whatsoever in government shall be hereditary." [2]

Here the word "office" is made synonymous with "place."

The Constitution of Vermont testifies: —

"All power being originally inherent in, and consequently derived from, the people, therefore all *officers* of government, whether *legislative* or executive, are their trustees and servants." [3]

Thus, in Vermont, members of the Legislature are "officers."

The old Constitution of New Jersey testifies also, in the clause prescribing the qualifications entitling a person to vote: —

"For representatives in Council and Assembly, and also for all *other* public *officers* that shall be elected by the people of the county at large." [4]

Here again members of the *Legislature* are treated as "public *officers.*"

The Constitution of Pennsylvania testifies: —

"Members of the General Assembly, and *all officers,* exec-

[1] Bill of Rights, Art. VIII.
[2] Ibid., Art. IX.
[3] Declaration of Rights, Art. VI.
[4] Art. IV.

utive and judicial, shall be bound by oath or affirmation to support the Constitution of this Commonwealth, and to perform the duties of their respective *offices* with fidelity."[1]

Here members of the General Assembly are classed with those holding "offices."

The original Constitution of New York is more positive: —

"The chancellor and judges of the Supreme Court shall not at the same time hold *any other office*, excepting that of Delegate to the General Congress upon special occasions; and the first judges of the county courts in the several counties shall not at the same time hold any other *office*, excepting that of *Senator* or Delegate to the General Congress."[2]

Here the post of Delegate to the General Congress, and also of "Senator," is treated as an "office."

Surely this is enough. The post of Senator is an office of honor or profit, and a "Senator" is an "officer."

2. But, assuming that the post of Senator is an "office," and that a Senator is an "officer," the question occurs, To what "department of the public service" does he belong?

Clearly he is not of the "military" or "naval" department. But if not "military" or "naval," he must be "civil." Here again consult the dictionary. I cite Webster.

"*Civil.* It is distinguished from *ecclesiastical*, which respects the Church, and from *military*, which respects the army and navy. — This term is often employed in contrast with *military:* as, a *civil* hospital, the *civil* service, &c."

[1] Art. VIII. [2] Art. XXV.

"*Civil List.* In England, formerly, a list of the entire expenses of the *civil* government; hence the officers of *civil* government, who are paid from the public treasury; also, the revenue appropriated to support the *civil* government."

"*Civil State.* The whole body of the laity or citizens, not included under the military, maritime, and ecclesiastical states."

To say that a Senator is not included under this comprehensive, but distinctive term, is simply an absurdity.

It is evident that Congress adopted the words of the statute because they were comprehensive and distinctive. They obviously comprehended all "officers" in the "public service," whether "elected," like a Senator, or "appointed," like a judge. But, beyond their plainness, these words had this added advantage, that already for more than a generation they had received a practical interpretation from Congress.

Here is the familiar Blue Book. Its title-page begins: —

"Register of *officers and agents, civil,* military, and naval, *in the service of the United States.*"

Turning to the contents, we find in this list Members of Congress, including Senators and Representatives, with the "officers and agents" of the two Houses.

If we go back to the Blue Book for 1820, which is now in my hands, we find the same title, and the same enumeration of Senators and Representatives.

This Blue Book is still published, in pursuance of a joint resolution by Congress, originally adopted as long ago as 27th April, 1816, with the following title: —

"Resolution requiring the Secretary of State to compile

and print, once in every two years, *a register of all officers and agents, civil*, military, and naval, in the service of the United States."

If Senators are properly included in such a register, it is only as belonging to the "*civil* department of the public service," which is precisely where they have been placed by the recent Act of Congress.

The only apology for the objection urged from the beginning of this debate with so much pertinacity is founded on the case of Mr. Blount, the Senator expelled and afterwards impeached, at the close of the last century. I shall not take time to consider this case. It has been amply done by others. On former occasions I have done it at length. And yet I will not leave it without protesting again that it is absolutely inapplicable to the present occasion. If that case were out of the way, nobody would have suggested that a "Senator" was not an "*officer* in the *civil* department of the public service." Now what did this case decide? Let another give the summary. I quote the words of Mr. Wharton, in the notes to his edition of the State Trials.

"*In a legal point of view*, all that this case decides is, that a Senator of the United States, who has been expelled from his seat, is not, after such expulsion, subject to impeachment; and *perhaps* from this the broader proposition may be drawn, that none are liable to impeachment except officers of the government, in the technical sense, excluding thereby members of the National Legislature."[1]

The case of Mr. Blount has no application to the present question. It is not an interpretation of the

[1] State Trials of the United States during the Administrations of Washington and Adams, p. 817, note.

statute, and so far as it illustrates the Constitution it simply concerns the liability to impeachment. But even this case has often been drawn into doubt. And if we look into the proceedings of the time, we find that the decision, such as it was, encountered an able and earnest opposition.

Among those who took a distinguished part on that occasion was James A. Bayard,[1] of Delaware, the eminent Representative who conducted the impeachment as Manager on the part of the House of Representatives. In his effective argument he has set forth the true signification of the Constitution. From the argument of the Senator from Delaware [Mr. BAYARD] in the present debate I confidently appeal to that of the earlier Mr. Bayard. Here is a passage.

"I have submitted, in the course of my argument, that the sound principle of construction to be adopted, in relation to the construction of an instrument having in view the vast object of settling the powers of the Government and the rights of the people, is to give it such an interpretation as is best calculated to give effect generally to all its parts according to its true design. If I am supported in this principle, I shall be able to show, by strong cases under the Constitution, that its undeniable intention must be frustrated, if a Senator be not considered an officer of the United States.

"I find it provided in the seventh clause of the third section of the first article, that conviction on impeachment disqualifies the party convicted from holding any *office* of honor, trust, or profit under the United States. If a seat in the Senate be not an office, the disqualification does not extend to it. And yet can it reasonably be contended that the policy which incapacitates a citizen, if convicted on impeach-

[1] Father of Mr. Bayard, Senator of Delaware, who took part in this debate.

ment, from holding an office the most mean and humble, does not apply to the case of a Senator? The wisdom of the Constitution, Sir, has considered a conviction as an evidence of moral unfitness for public trust. It never can happen but in the case of a great national offence. And shall such an offender, degraded from the capacity of even being doorkeeper of this Chamber, yet retain the capacity of being a member of a body of the most dignity, trust, and power in the country? This is a solecism in politics, an absurdity in reason, which I trust this honorable court will not willingly by their act attach to an instrument so highly and justly revered as the Constitution of our Government.

"I find also a provision in the seventh [eighth] clause of the ninth section of the first article, that 'no person holding any office of profit or trust under the United States shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.' If a Senator holds no office of profit or trust under the United States, it is *lawful* for him to accept a present, title, or office from any king or foreign state. Can it be possible that a public functionary, of all others the peculiar object of this jealous restriction, is, in fact, the sole object of exemption from its operation? Can it be imagined that a Senator, upon whom the Constitution has heaped the powers and trusts of legislator, judge, and executive magistrate, is the only person who is left exposed to the seductions of foreign influence? It can never be admitted that a situation which from its trust and importance most invites corruption is the only one which the Constitution has not guarded against. If, Sir, a Senator be not an officer under this clause, it might happen that the Senate of the United States might become a House of Lords. It would be in the power of any king in Europe to change our free government, and to convert one branch, at least, from a republican into an aristocratic form. You will not suffer an ensign in your

army to accept the humble title of Chevalier, and yet you will allow an integral part of the Government to be composed of earls and dukes. And let me pray the honorable Court to remember, at the same time, that the Constitution has provided that a member of either House shall not be allowed to retain his seat and hold any commission, civil or military, under the United States. The President has no titles to grant, nor offices of great emolument to confer; and yet the chaste republicanism of the Constitution will not allow a Senator to feel the influence of his patronage; and yet, at the same time, he may *lawfully* be the pensioner or the titular noble of a foreign power. Such a doctrine is not simply absurd, but infinitely dangerous."[1]

In view of these emphatic words, it is difficult to see how any person can insist that a "Senator" is not a "civil officer," even according to the text of the Constitution. Conceding to the judgment on the trial of impeachment all the authority which can belong to it, you cannot properly deduce from it any conclusion, except that a Senator already expelled is not a "civil officer" liable to impeachment: nothing beyond this.

But whatever the signification of this word in the Constitution, even conceding all that is claimed for it there, the instance is entirely inapplicable to the interpretation of the statute in question. If there be doubt on the Constitution, there is none on the statute. The latter is plain, and there are no associate words to interfere with its natural and unequivocal signification.

I conclude this branch of the subject as I began, by putting aside all irrelevant matter, all superfluous questions, all surplusage, all topics not properly germane to the debate. There is no question of the Constitution,

[1] Annals of Congress, 5th Cong., col. 2259, 2260, January 3, 1799.

no question of *ex post facto*, but a simple question on the meaning of a statute.

The oath is prescribed by Congress. It is too late to debate its constitutionality thus incidentally. It only remains for us to take it, promptly, patriotically. The procrastination of this debate is of evil example. How can we expect the alacrity of loyalty among the people, if the Senate hesitates?

Another objection to the proposed rule has been brought forward by the Senator from Vermont [Mr. FOOT]. According to him, the statute is obligatory, and the oath must be taken by Senators, but a rule requiring the oath is superfluous and without precedent. The argument of the Senator is plausible, but it is answered by a simple statement of facts, in which, as presiding officer of the Senate, he bore a conspicuous part.

From this statement it will appear that the rule, or some equivalent action of the Senate, is not superfluous.

Here Mr. Sumner set forth the facts substantially as presented in the Introduction, showing the necessity of the proposed rule, and then proceeded.

The language of the Chair, when inviting Senators to take the oath, left a loop-hole through which they might avoid the oath. It was, "Such Senators present *as choose to do so* will come forward," and then "they will have *an opportunity to subscribe the oath.*" In such terms Senators were invited to do as they pleased, thus making a discrimination between the earlier oath, which they were obliged to take in order to be qualified, and the additional oath, which they were free to neglect.

Such is a plain statement of facts, which I make in no spirit of personal criticism, but simply that you may see the occasion for the proposed rule.

Had the Chair at the beginning proceeded to administer the additional oath, as the earlier oath, there would have been no occasion for a rule. Or had the Chair afterwards, when attention was called to the omission, administered the additional oath according to the requirement of the statute, there would have been no occasion for a rule.

The Chair did no such thing, but left the taking of the oath to the conscience or will of each Senator. And though the statute solemnly declares that "every person *elected* or appointed to any office of honor or profit under the Government of the United States .... shall, *before entering upon the duties of such office, and before being entitled to any of the salary or other emoluments thereof,* take and subscribe" the oath in question, yet the Senator from Delaware [Mr. BAYARD] has not only "entered upon the duties" of his office as Senator, but he has continued to discharge these duties, and to draw his salary, although he has never taken and subscribed the oath.

Evidently something must be done to correct this incongruity, and to rehabilitate, if I may so say, the Act of Congress. I know no better way than by the proposed rule. But I have no partiality for this mode. I am ready for any other proposition which will lift the statute from the desuetude and neglect into which it was allowed to fall, and will secure its enforcement. In the events at hand this statute will be a safeguard of the Republic, and its enforcement here will secure its enforcement everywhere. To the traitor seeking office

it will be a touchstone, while, with guardian force, it thrusts away from these Chambers all those brutal enemies, who, for the sake of Slavery, have helped to fill our land with mourning.

On the Yeas and Nays, the vote stood, Yeas 28, Nays 11. So the resolution was adopted.

January 26th Mr. Bayard took the prescribed oath, and on the 29th resigned his seat in the Senate.

January 25th, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in a bill supplementary to an Act entitled "An Act to prescribe an oath of office and for other purposes," approved July 2, 1862, which was read the first and second times by unanimous consent, and referred to the Committee on the Judiciary. It provided that no person should be admitted to the bar of the Supreme Court of the United States, or of any Circuit or District Court of the United States, or of the Court of Claims, as an attorney or counsellor of such court, or should be allowed to appear and be heard in any such court, by virtue of any previous admission or any special power of attorney, unless he should have first taken the oath prescribed by the Act of July 2, 1862.

June 28th, Mr. Trumbull, from the Judiciary Committee, reported adversely on this bill.

December 22d, on motion of Mr. Sumner, the Senate proceeded to consider this bill, and it was passed, — Yeas 27, Nays 4. January 23, 1865, it passed the House of Representatives, and January 24th was approved by the President.

THE LATE HON. JOHN W. NOELL, REPRESENTATIVE OF MISSOURI.

REMARKS IN THE SENATE, ON HIS DEATH, FEBRUARY 1, 1864.

MR. PRESIDENT, — The personal acquaintance which I had with Mr. Noell was very slight; but I honored him much, as a public servant who at a critical moment discerned clearly the path of duty and had the courage to tread it.

Born among slaves and living always under the shadow of Slavery, his character was not corrupted, nor was his judgment obscured. All of us, although born among freemen, and living far away from that influence so unhappily disturbing our country, might take counsel from his intelligent alacrity. While others hesitated, he was prompt. While others surrendered to procrastination, he grappled at once with the giant evil. Such a man was exceptional, and now that he is dead he deserves exceptional honors.

There are men in history who by a single effort fix public attention. A member of Parliament in the last century was known as "Single-Speech Hamilton." Others have become famous from the support of a single measure. Perhaps Mr. Noell may find place in this class. But no "Single-Speech Hamilton" could claim the homage which belongs to him.

There have been many in Congress from the Slave

States, but he was the first in our history inspired to bring in a bill for the abolition of Slavery in a State. Rejecting the palpable sophistries by which it was sought to postpone an act of unquestionable justice, and discarding the idea that wrong was to be dealt with tardily, gradually, or prospectively, he proposed Immediate Emancipation. Let it be spoken in his praise. Let it be carved on his tombstone. His bill passed the House. It was lost in the Senate.[1] But it was not lost to his fame. He died without beholding the fulfilment of his desires, but the cause with which his name is associated cannot die.

Among the human benefactors of Missouri, so rich in natural resources, he must always be numbered; and his memory will be appreciated there just in proportion as men discern what contributes most to the wealth, the character, and the true nobility of a State. Hereafter, when the present conflict is ended and peace once more blesses our wide-spread land, he will be mentioned gratefully with those who saw truly how this blessing was to be secured, and bravely strove for it. Better in that day to have been a doorkeeper in the house of Freedom than a dweller in the tents of the ungodly: and what ungodliness can compare with the ungodliness of Slavery, whether in the lash of the taskmaster or in the speech of its apologist?

[1] *Ante*, Vol. VII. p. 266.

RECONSTRUCTION AGAIN: GUARANTIES AND SAFEGUARDS AGAINST SLAVERY AND FOR PROTECTION OF FREEDMEN.

RESOLUTIONS IN THE SENATE, FEBRUARY 8, 1864.

IN the Senate, February 8, 1864, the following resolutions, submitted by Mr. Sumner, were read and ordered to be printed.

RESOLUTIONS defining the character of the national contest, and protesting against any premature restoration of Rebel States, without proper guaranties and safeguards against Slavery and for the protection of Freedmen.

RESOLVED, That, in determining the duties of the National Government, it is of first importance that we should see and understand the real character of the contest forced upon the United States, for failure to appreciate this contest must end in failure of those proper efforts essential to the reëstablishment of unity and concord; that, recognizing the contest in its real character, as it must be recorded by history, it is apparent that it is not an ordinary rebellion or an ordinary war, but that it is absolutely without precedent, differing from every other rebellion and every other war, inasmuch as it is an audacious attempt, for the first time in history, to found a wicked power on the corner-stone of Slavery; and that such an attempt, having this single object, — whether regarded as rebellion or war, — is so completely penetrated and absorbed, so entirely

filled and possessed by Slavery, that it can be regarded as nothing else than the huge impersonation of this crime, at once rebel and belligerent, or, in other words, as *Slavery in arms.*

2. That, recognizing the identity of the Rebellion and Slavery, so that each is to the other as another self, it becomes plain that the Rebellion cannot be crushed without crushing Slavery, as Slavery cannot be crushed without crushing the Rebellion; that every forbearance to the one is forbearance to the other, and every blow at the one is a blow at the other; that all who tolerate Slavery tolerate the Rebellion, and all who strike at Slavery strike at the Rebellion; and that, therefore, it is our supreme duty, in which all other present duties are contained, to take care that the barbarism of Slavery, in which alone the Rebellion has its origin and life, is so utterly trampled out that it can never spring up again anywhere in the Rebel and belligerent region; for, leaving this duty undone, nothing is done, and all our blood and treasure are lavished in vain.

3. That, in dealing with the Rebel War, the National Government is invested with two classes of rights, — one the *Rights of Sovereignty,* inherent and indefeasible everywhere within the national limits, and the other the *Rights of War,* or belligerent rights, superinduced by the nature and extent of the contest; that, by virtue of the Rights of Sovereignty, the Rebel and belligerent region is now subject to the nation as its only rightful government, bound under the Constitution to all the duties of sovereignty, and by special mandate bound also to guaranty to every State a republican form of government, and to protect it against invasion; that, by virtue of the Rights of War, this same region is sub-

ject to all the conditions and incidents of war, according to the established usages of Christian nations, out of which is derived the familiar maxim of public duty, "Indemnity for the past and security for the future."

4. That, in seeking restoration of the States to their proper places as members of the Republic, so that every State shall enjoy again its constitutional functions, and every star on the national flag shall represent a State in reality as well as in name, care must be taken that the Rebellion is not allowed, through any negligence or mistaken concession, to retain the least foothold for future activity, or the least germ of future life; that, whether proceeding by the exercise of sovereign rights or of belligerent rights, the same precautions must be exacted against future peril; that, therefore, any system of "Reconstruction" must be rejected which does not provide by irreversible guaranties against the continued existence or possible revival of Slavery, and that such guaranties can be primarily obtained only through the agency of the National Government, which to this end must assert a temporary supremacy, military or civil, throughout the Rebel and belligerent region, of sufficient duration to stamp upon this region the character of Freedom.

5. That, in the exercise of this essential supremacy of the nation, a solemn duty is cast upon Congress to see that no Rebel State is prematurely restored to its constitutional functions until within its borders all proper safeguards are established, so that loyal citizens, including the new-made freedmen, cannot at any time be molested by evil-disposed persons, and especially that no man there may be made a slave; that this solemn duty belongs to Congress under the Constitution,

whether in the exercise of Rights of Sovereignty or Rights of War, and that in its performance that system of "Reconstruction" will be best, howsoever named, which promises most surely to accomplish the desired end, so that Slavery, which is the synonym of the Rebellion, shall absolutely cease throughout the whole Rebel and belligerent region, and the land it has maddened, impoverished, and degraded shall become safe, fertile, and glorious from assured Emancipation.

6. That, in the process of "Reconstruction," it is not enough to secure the death of Slavery throughout the Rebel and belligerent region only; that experience testifies against Slavery wherever it exists, not only as crime against humanity, but as disturber of the public peace and spoiler of the public liberties, including liberty of the press, liberty of speech, and liberty of travel and transit; that, in the progress of civilization, it has become incompatible with good government, and especially with that "republican form of government" which the United States are bound to guaranty to every State; that from the outbreak of this Rebel war, even in States professing loyalty, it has been an open check upon patriotic duty and an open accessory to the Rebellion, so as to be a source of unquestionable weakness to the national cause; that the defiant pretensions of the master claiming control of his slave are in direct conflict with paramount rights of the nation; and that, therefore, it is the further duty of Congress, in the exercise of its double powers under the Constitution, as guardian of the national safety, to take all needful steps for the extinction of Slavery, even in States professing loyalty, so that this crime against humanity, this disturber of the public peace, and this spoiler of the public liberties

shall no longer exist anywhere to menace the general harmony, that civilization may be no longer shocked, that the constitutional guaranty of a republican form of government to every State may be fulfilled, that the Rebellion may be deprived of the traitorous aid and comfort Slavery has instinctively volunteered, and that the master claiming an unnatural property in human flesh may no longer defy the nation.

7. That, in addition to the guaranties stipulated by Congress, and as the cap-stone to its work of restoration and reconciliation, the Constitution itself must be so amended as to prohibit Slavery everywhere within the limits of the Republic; that such prohibition, leaving all personal claims, whether of slave or master, to the legislation of Congress and of the States, will be a sacred and inviolable guaranty, representing the collective will of the people of the United States, and placing Universal Emancipation under sanction of the Constitution, so that Freedom shall be engraved on every foot of the national soil and be woven into every star of the national flag, while it elevates and inspires our whole national existence, and the Constitution, so often invoked for Slavery, but at last in harmony with the Declaration of Independence, will become, according to the aspirations of its founders, sublime guardian of the inalienable right of every human being to life, liberty, and the pursuit of happiness: all of which must be done in the name of the Union, in duty to humanity, and for the sake of permanent peace.

PRAYER OF ONE HUNDRED THOUSAND.

SPEECH IN THE SENATE, ON PRESENTING A PETITION OF THE WOMEN'S NATIONAL LEAGUE, PRAYING UNIVERSAL EMANCIPATION BY ACT OF CONGRESS, FEBRUARY 9, 1864.

MR. PRESIDENT, — I offer the petition now on the desk before me. It is too bulky for me to take up. I need not add that it is too bulky for any of our pages to carry.

This petition marks a stage of public opinion in the history of Slavery, and also in the suppression of the Rebellion. As it is short, I will read it.

"*To the Senate and House of Representatives of the United States:* —

"The undersigned, women of the United States above the age of eighteen years, earnestly pray that your honorable body will pass, at the earliest practicable day, an act emancipating all persons of African descent held to involuntary service or labor in the United States."

There is also a duplicate of the petition, signed by "men above the age of eighteen years."

It will be perceived that the petition is in rolls. Each roll represents a State. For instance, here is New York with a list of seventeen thousand seven hundred and six names, Illinois with fifteen thousand three hundred and eighty, and Massachusetts with eleven thousand six

hundred and forty-one. But I will read the abstract with which I have been furnished.

State.	Men.	Women.	Total.
New York	6,519	11,187	17,706
Illinois	6,382	8,998	15,380
Massachusetts	4,249	7,392	11,641
Pennsylvania	2,259	6,366	8,625
Ohio	3,676	4,654	8,330
Michigan	1,741	4,441	6,182
Iowa	2,025	4,014	6,039
Maine	1,225	4,362	5,587
Wisconsin	1,639	2,391	4,030
Indiana	1,075	2,591	3,666
New Hampshire	393	2,261	2,654
New Jersey	824	1,709	2,533
Rhode Island	827	1,451	2,278
Vermont	375	1,183	1,558
Connecticut	393	1,162	1,555
Minnesota	396	1,094	1,490
West Virginia	82	100	182
Maryland	115	50	165
Kansas	84	74	158
Delaware	67	70	137
Nebraska	13	20	33
Kentucky	21	..	21
Louisiana	..	14	14
Citizens of the United States living in New Brunswick	19	17	36
	34,399	65,601	100,000

These several petitions are consolidated into one, being another illustration of the motto on our coin, — *E pluribus unum.*

This unprecedented petition is signed by one hundred thousand men and women, who unite in this unparalleled number to support its prayer. They are from all parts of the country, and from every condition of life:

from the seaboard, fanned by the free airs of the ocean, and from the Mississippi and the prairies of the West, fanned by the free airs which vitalize that extensive region; from the families of the educated and uneducated, rich and poor, of every profession, business, and calling in life, representing every sentiment, thought, hope, passion, activity, intelligence, that inspires, strengthens, and adorns our social system. Here they are, a mighty army, one hundred thousand strong, without arms or banners, the advance-guard of a yet larger army.

Though memorable for numbers, these petitioners are more memorable for the prayer in which they unite. They ask nothing less than Universal Emancipation; and this they ask directly at the hands of Congress. No reason is assigned. The prayer speaks. It is simple, positive. So far as it proceeds from the women of the country, it is naturally a petition and not an argument. But I need not remind the Senate that there is no reason so strong as the reason of the heart. Do not all great thoughts come from the heart?

It is not for me at this moment to offer reasons which the one hundred thousand petitioners have forborne. But I may properly add, that, naturally and obviously, they all feel in their hearts, what reason and knowledge confirm, not only that Slavery *as a Unit*, one and indivisible, is the guilty origin of the Rebellion, but that its influence everywhere, even outside the Rebel States, is hostile to the Union, always impairing loyalty, and sometimes openly menacing the national cause. It requires no difficult logic to conclude that such a monster, wherever it shows its head, is a *National Enemy*, to be pursued and destroyed as such, or at least a nuisance to the national cause, to be abated as such.

The petitioners know well that Congress is the depository of those supreme powers by which rebellion, alike in its root and distant offshoots, may be surely crushed, while unity and peace are permanently assured. They know well that the action of Congress may be with the coöperation of the Slave-Masters, or even without their coöperation, under the overruling law of military necessity, or the commanding precept of the Constitution to guaranty a republican form of government. Above all, they know well that to save the country from peril, especially to save the national life, there is no power in the ample arsenal of self-defence which Congress may not grasp; for to Congress, under the Constitution, belongs the prerogative of the Roman Dictator, to see that the Republic receives no detriment. Therefore to Congress these petitioners appeal.

I ask the reference of the petition to the Select Committee on Slavery and Freedmen.

An earnest debate ensued, which ended in the reference of the petition.

EQUAL PAY OF COLORED SOLDIERS.

REMARKS IN THE SENATE, ON DIFFERENT PROPOSITIONS, FEBRUARY 10, 29, AND JUNE 11, 1864.

FEBRUARY 3d, Mr. Wilson, of Massachusetts, reported a joint resolution to equalize the pay of soldiers in the United States army, which provided that all persons of color, who have been or may be mustered into the military service of the United States, shall receive the same uniform, clothing, arms, equipments, camp equipage, rations, medical and hospital attendance, pay and emoluments, other than bounty, as other soldiers of the regular or volunteer forces of the United States of like arm of service, during the whole term in which they shall be or shall have been in such service, and every person of color who shall hereafter be mustered into the service shall receive such sums in bounty as the President shall order in the different States and parts of the United States, not exceeding one hundred dollars.

February 4th, the Senate considered the joint resolution. Mr. Fessenden, of Maine, "wished to inquire what propriety there is in our going back and paying them this increase for services already rendered." Mr. Wilson thought, "as an act of justice, the bill should be retrospective," — that "the gross injustice done by the country toward these men ought to be corrected." Mr. Fessenden was in favor, and had ever been in favor, of putting colored soldiers on a level with white, but he was opposed to paying men for services already rendered, unless the men were promised full pay by orders emanating from the War Department. Mr. Sumner, after stating that there were two classes of enlistments, first, under the statute of 1861, and, secondly, under the statute of 1862, insisted that under the former statute any person of African descent might be enlisted and entitled to the same pay as a white soldier. "There was no limitation in the statute. There was no color there. There was nothing against the enlistment of colored men under that statute, except a blind prejudice which we ought to forget." He concluded: "I wish to see our colored troops treated like white troops in every respect. But I would not press this first

principle by any retroactive proposition, unless where the faith of the Government is committed, and there I would not hesitate. The Treasury can bear any additional burden better than the country can bear to do an injustice."

February 10th, the subject being still under consideration, Mr. Sumner said: —

MR. PRESIDENT, — I am grateful to the Senator from Connecticut [Mr. FOSTER] for his admirable argument on this question; and yet it seems to me, if he will pardon me, that even in point of law he has not stated the case as strongly in favor of this obligation as it might be stated. It may be remembered, that, when this discussion was closing, the other day, I ventured to throw out the remark, that there were evidently two classes of cases: the first, where enlistments in good faith were made under the statute of 1861; and the second, where they were made under the statute of 1862.

In point of law, it seems obvious, if enlistments were made in good faith under the statute of 1861, and there was no legal objection to those enlistments, then the United States are bound. If, on the contrary, they were made under the subsequent statute, then it is simply a question of policy and expediency whether we shall make this payment. The whole subject is open to discussion, — first, in the light of sentiment, which may involve expediency and policy, and, secondly, in the light of law. I shall not say anything upon it in the first aspect, except to make one remark, — that our country at this moment can ill afford to take the responsibility of refusing justice to colored soldiers whom it has allowed to shed their blood in its cause. The soul repudiates any such sacrifice, — for sacrifice it will be, at once of

honor and of interest. I do not follow out this idea, but pass at once to the second aspect, which I called the question of law; and there I differ from my learned friend from Connecticut, when I say that there are certain colored regiments in the field who in point of law are entitled to the full wages of thirteen dollars a month.

MR. FOSTER. If the Senator will pardon me, I insisted on that fact, and said they were enlisted, not under the law, but under instructions from the Department, authorizing the officers to enlist them on the same terms that white troops were enlisted, which would be thirteen dollars per month.

MR. SUMNER. Very well. I still understood the Senator to imply that perhaps in point of law there might be some doubt whether the Government was liable for the thirteen dollars a month. I propose to carry the argument a little further, and show, by calling attention for one moment to the statutes, — not at any great length, — that, under the statutes themselves, the Government is obliged to pay certain regiments thirteen dollars a month.

I begin with the Massachusetts fifty-fourth and fifty-fifth regiments; and these may be taken as examples. I have before me the actual order under which those two regiments were raised.

"WAR DEPARTMENT, WASHINGTON CITY,
January 26, 1863.

"*Ordered*, That Governor Andrew, of Massachusetts, is authorized, until further orders, to raise such number of volunteer companies of artillery for duty in the forts of Massachusetts and elsewhere, and such corps of infantry for the volunteer military service, as he may find convenient; *such volunteers to be enlisted for three years*," —

Mark, Sir, if you please, the period of service, — "for three years," —

"or until sooner discharged, *and may include persons of African descent*, organized into separate corps. He will make the usual needful requisitions on the appropriate staff bureaus and officers for the proper transportation, organization, supplies, subsistence, arms, and equipments, of such volunteers.

"EDWIN M. STANTON, *Secretary of War*."

Now, on the face of this order, the Governor of Massachusetts is empowered to raise certain regiments in the volunteer service of the United States for three years. Under what statute? Under no other, surely, than the statute of 1861, for it was under that statute that the organization for three years was authorized. If you come to the later statute — and to that I ask particular attention — of July 17, 1862, which contains a special provision with reference to African troops, you will find that it is to raise troops for nine months.

"SEC. 3. *And be it further enacted*, That the President be, and he is hereby, authorized, in addition to the volunteer forces which he is now authorized by law to raise, to accept the services of any number of volunteers, not exceeding one hundred thousand, as infantry, for a period of nine months, unless sooner discharged."

And then, Sir, in section twelve of this same statute, the President is further empowered to employ persons of African descent. In section fifteen we come to the question of pay.

"*And be it further enacted*, That all persons who have been or shall be hereafter enrolled in the service of the United States under this Act" —

"Under this Act," — an Act authorizing enrolments for nine months, not for three years —

"shall receive the pay and rations now allowed by law to soldiers, according to their respective grades: *Provided*, That persons of African descent, *who under this law shall be employed*, shall receive ten dollars per month and one ration, three dollars of which monthly pay may be in clothing."

Now, Sir, you have the question precisely: Under what statute were these enlistments made? Were they under the nine months' statute, or under the three years' statute? To answer that question, look at the order of the War Department: —

"*Ordered*, That Governor Andrew, of Massachusetts, is authorized, until further orders, to raise such number of volunteer companies of artillery for duty in the forts of Massachusetts and elsewhere, and such corps of infantry for the volunteer military service, as he may find convenient; *such volunteers to be enlisted for three years, or until sooner discharged.*"

Here are no nine months' men. There is nobody under the second statute, but all are clearly under the first by the plain language of the order. And this is none the less so, even if the second statute, so far as Africans are concerned, may be interpreted to sanction a longer term of enlistment.

Mark well, that "all persons who have been or *shall be hereafter enrolled in the service of the United States* under this Act shall receive the pay and rations now allowed by law to soldiers." (§ 15.) But were not the soldiers of the fifty-fourth and fifty-fifth Massachusetts regiments "enrolled in the service of the United States"? Unquestionably, if troops ever were enrolled.

But it is the *proviso* that follows which causes the mischief. "Persons of African descent, *who under this law shall be employed*, shall receive ten dollars," &c.

It is said that these colored soldiers were "employed," —that is all,—not "enrolled," but "employed"; and on this distinction the promise of Governor Andrew in the name of the National Government, and the honest expectations of the soldiers, are set aside.

The order of the Secretary of War is for "volunteer companies of artillery," also for "corps of infantry," "*to be enlisted for three years*," "and may include persons of African descent." The persons of African descent are to be included in the artillery or infantry "enlisted." Such persons are in advance declared men to be *enlisted*. And yet the argument which denies them their well-earned wages asserts that they are only "employed," and not enlisted. But if they are "employed," then are the "corps of infantry" in which they are included "employed" also.

To me the conclusion seems irresistible, on the face of these facts, that these troops were enrolled or enlisted under the earlier statute. It is clear that Governor Andrew thought so at the time, and it is equally clear that the troops themselves thought so at the time.

But there remains behind another question. Is there anything in existing legislation to prevent the enlistment of a colored person under the statute of 1861? To this I answer positively in the negative, and I challenge contradiction. There is no color in that statute. There is no color in any statute raising troops for the army of the United States, nor any color in any statute raising sailors for the navy of the United States. Only in our militia statutes do you find the word "white."

In all our army and navy statutes there is no such limitation. The statute of 1861, therefore, in point of law embraced all persons, whether black or white, and it was entirely at the option of the President, before the passage of the statute of 1862, to organize or receive colored troops under that statute. He hesitated. I regretted at the time his hesitation. I thought it an error by which the country suffered. We endeavored to repair that error by the amendment introduced by the brave Senator from New York, who is no longer here [Mr. KING], which you will find in the statutes of 1862. But I doubt if any person at the time, who had given attention to the subject, supposed this amendment necessary, except as an encouragement to a policy which the Government was too slow to adopt. For myself, I remember well my own feelings in voting for it. I accepted it as notice to the Administration that in the opinion of Congress the time had come when colored troops must be used. In point of law it was plain that it could not stand in the way of an enrolment under the earlier statute.

And the Secretary of War seems to have acted on this interpretation; for, in undertaking to raise colored troops, no allusion was made to the statute of 1862, but the language of his order in every particular pointed to the statute of 1861. Am I wrong, then, if I say that in point of law these colored troops have just the same right to the full pay of a soldier that any Senator on this floor has to his compensation? It is by just as good title, and as firm in the statute-book, as your own pay, Sir.

I suggested, the other day, that there were two classes of cases,— one where the enlistments had been made in

good faith under the earlier statute, and a second class where they had been made under the later statute; and I suggested, that, if we were disposed to recognize the difference between these two classes, it might afford a solution to our present difficulties. I am not disposed, on any ground of sentiment, to impose an unnecessary tax upon the burdened treasury of my country, although there is no tax required by justice that I would hesitate to impose. If there are colored troops in our service, who, at the time they were mustered, had no reason to suppose that they were enlisted under the statute of 1861, who were led to believe that they came under the statute of 1862, that is, for the pay of ten dollars, I am not disposed to press for them any claim on ground of sentiment, — that is, for the past. I take the past as it is; but for the future I insist that they shall be put upon an equality. True equality in the past is for the National Government to redeem its pledges, whether direct or only implied, — whether there is an absolute promise, of which you have a record, or only an inference or understanding, founded, it may be, in misconception, but still embraced in good faith by innocent parties. On this ground, at a proper moment, I shall be ready to propose an amendment something like the following, to come in immediately after the word "service": —

"*Provided*, That, with regard to all past service, it shall appear to the satisfaction of the Secretary of War that such persons, at the time of being mustered into service, were led to suppose that they were enlisted under the Act of Congress approved July 22, 1861, as volunteers in the army of the United States."

Mr. Fessenden could not concur in Mr. Sumner's construction of the

Act of 1862. Mr. Lane, of Indiana, thought, "if we place colored troops hereafter on an equality with the white troops, it is surely as much as they can ask, either from the justice or the generosity of this Senate; for no man, in his sober senses, will say that their services are worth as much, or that they are as good soldiers." Mr. Sumner replied: —

MR. PRESIDENT, — I hope the Senator from Indiana will pardon me, if I refer to him for one minute. He is so uniformly generous and just that I was the more surprised, when I listened to his remarks just now. I was surprised at his lack of generosity and his lack of justice — he will pardon me — toward these colored soldiers. I was surprised — he will pardon me — at his injustice to the State of Massachusetts. He spoke disparagingly of the colored soldiers. He thought they had been paid enough. He thought that the gallant blood shed on the parapets of Fort Wagner had been paid enough; and he failed to see that the men who died for us on that bloody night, and were buried in the same grave with the devoted colonel who led them, now stood alive in this presence to plead for the equality of their race. How can I help regret that the Senator was led into such remark?

Also, in the ardor of his utterance, — he will pardon me still further, — the Senator undertook to say, that, if we entered on this payment, we should charge the Treasury with some one or two hundred millions in addition to its present burden. Why, Sir, that is an entire mistake. Even if we pay everything contemplated by the resolution, I am told that the whole will be little more than a million: much, I admit, to charge unnecessarily upon the Treasury, but not the very large sum which seemed to fill the patriotic vision of the Senator.

MR. LANE, of Indiana. The Senator misunderstood my statement altogether. My statement was, that, if we were called upon now to go back and increase the pay of the colored troops three dollars a month more than the law provided, with the same propriety we might be called upon to go back and increase the pay of our white soldiers because they thought that their pay had not been enough; and that would add to the burdens of the Treasury to a very large amount.

MR. SUMNER. I accept the correction gladly. Certainly I have no disposition to press anything beyond the meaning of the Senator. But he will allow me to say that I was hardly mistaken in his argument. It was, that we should charge the Treasury with a burden it could ill bear. Now, if this money is due, let us charge the Treasury with the burden; and that brings me again to the direct question, Is not the money due? The Senator denies it; but he will pardon me again, if I say he hardly went into an argument on that head. I repeat, then, is the money due? I dislike to trouble the Senate by going over topics already too much discussed; but I trust they will excuse me, if I state the case yet once more. On many accounts I confess a special interest in it; not the least is that I would have my country above doing injustice, least of all injustice to people of a race too long crushed by injustice.

The argument need not be long. In the first place, the statute of 1861 contains no words which can be interpreted in any way to exclude the enrolment of persons of color under it. I challenge any Senator to mention a single word in that statute authorizing any such exclusion. You have, then, the statute in the case. That is the first point. Then you have the order from the

Secretary of War to Governor Andrew, authorizing an enrolment for three years, making no discrimination between persons of African descent and white soldiers. That is the second point. You have, in the third place, the open promises and pledges of Governor Andrew, under that order, and for the time being the agent of the United States, solemnly promising the full pay of thirteen dollars a month to these colored persons as soldiers of the United States. And, in the last place, you have the very terms of enlistment subscribed by these soldiers at the time of enlistment, which I read the other day, where it is expressly stated that they entered into service under the statute of 1861.

These four points, — the statute of 1861, the order of the Secretary, the promise of Governor Andrew in behalf of the United States, and the terms of enlistment, — all these make a case by which, as it seems to me, the Government is bound. In face of these, how can it be said that these colored troops were "employed" under the statute of 1862? There is no ingenuity of interpretation which can place them there.

That I am not mistaken in the facts on which I found this argument is apparent from a letter which I hold in my hand, written by one of these soldiers, now on Morris Island. I content myself with a brief extract.

"In the month of February, 1863, Governor John A. Andrew announced that he had permission from the War Department to raise a regiment of infantry to be composed of men of color. Enlisting began immediately, and the fifty-fourth regiment was filled to overflowing in three months. The only inducement he offered to these men was an acknowledgment of their manhood; for he promised that the United States Government would treat them, in *every*

particular, the same as other volunteer regiments from the State of Massachusetts."

MR. LANE. Will the Senator pardon me a moment just there?

MR. SUMNER. Certainly.

MR. LANE. They were to be treated in every respect as the volunteer troops from Massachusetts. Will the Senator contend that the commissioned officers of colored regiments might be drawn from the colored troops themselves, after the passage of the law of 1862? Was not that a disparity? Was that treating them like other troops?

MR. SUMNER. Of course the order is applicable simply to the enlisted men. It is not applicable to the officers.

The letter goes on to say, —

"The enlistment rolls signed by these men bound them to obey the President," &c.

How?

"In pursuance of the law passed in July, 1861, calling for volunteers."

Such was the understanding. By this lure you won these men to the field of sacrifice.

I have already said too much, but before I sit down I cannot forget that the Senator from Indiana, in his impetuous movement, brushed against the Commonwealth of Massachusetts. I do not remember his precise words, nor do I care to remember them. But he more than intimated that there was on the part of this State something else than a patriotic motive in pressing this obligation. I think he said this whole effort is to save the payment of this extra money. Does not the Senator know that Massachusetts has already provided

for the payment of this sum, so far as its own two regiments are concerned, and that those regiments have refused to receive it? These colored troops declare that they were enlisted as soldiers of the United States, and as such are entitled to the pay of soldiers of the United States from the Government of the United States. If it be wrong to maintain their claim, then is Massachusetts wrong, then am I wrong. If the claim is maintained earnestly, it is because, both in law and in sentiment, and on every ground of policy or expediency, it commends itself to those who represent Massachusetts. And now, since this State has been called in question, I shall not content myself with merely giving my own opinions and arguments, but I ask you to listen to her honored Governor.

In an official communication to the Legislature of Massachusetts, Governor Andrew has discussed this whole question with his accustomed lucidity and thoroughness. Here is something of what he says.

"To my own mind, the right of these men, under the existing statutes, to the lawful pay and allowances of volunteers is demonstrably clear. But if it is doubtful, it is agreed, I believe, in all quarters, that it will be the duty and the pleasure of Congress to embrace an early opportunity to prevent by positive legislation the continuance of that doubt. Meantime I must embrace the earliest occasion to invoke the Legislature of Massachusetts to render justice to the men of these regiments beyond the possibility of a doubt, by the appropriation of the needful means out of our own treasury until the National Congress or the Executive Department shall correct the error." [1]

[1] Address to the two Branches of the Legislature, November 11, 1863: Senate Documents, Extra Session, 1863, No. 1, pp. 16, 17.

The Governor, after considering some details of the argument, proceeds as follows.

"I think there can be no proposition of law more clear than this, namely, that colored men are competent to be enlisted into the regular army of the United States, into the volunteer army of the United States, into the navy of the United States, and to be employed in any arm of either service.

"The Military Enlistment Law of 1814 required only that the recruit shall be a 'free, effective, able-bodied man, between the ages of eighteen and fifty years.' (*See Act of December* 10, 1814.) It did not require a man to be under forty-five, nor a citizen, nor white, in which three respects it differs from the old Militia Act. The Naval Act of 1813 is not less clear." [1]

Such is the statement of the Governor on this question in point of law. At the time these regiments were mustered into the service he believed that he was acting legally under the statutes of the United States. He so instructed these men; and these men naturally believed him, and gave themselves, generously, nobly, beautifully, to the public service. Will the country now disown them? Will the country now fasten a ban upon them, and lead them to say in their hearts that they have been duped?

February 13th, the subject being still before the Senate, Mr. Sumner offered the proviso of which he had already given notice at the close of his first remarks; but, after debate, he withdrew it at the request of Mr. Wilson, who, seeing the opposition to the joint resolution, proposed to abandon all that part making it retroactive. In withdrawing it, Mr. Sumner again vindicated it, saying, in conclusion: "I am unwilling to withdraw the proposition. I shall do it, if my colleague

[1] Address to the two Branches of the Legislature, November 11, 1863: Senate Documents, Extra Session, 1863, No. 1, pp. 18, 19.

desires it. At any rate, I should rather, for my own satisfaction, have a vote upon it."

In the debate that ensued, Mr. Reverdy Johnson said: "If the Governor of Massachusetts has made a promise which the law did not authorize, if he has created, as between the Massachusetts soldiers and the Governor of Massachusetts, an obligation which ought to be redeemed, let Massachusetts redeem it." "They have passed a law to redeem it," said Mr. Fessenden, "but these regiments refuse to receive it from Massachusetts."

Mr. Wilson moved to insert words making the resolution applicable only "from and after the first day of January, 1864," which was agreed to. After debate, Mr. Sumner again moved his proviso, which was lost, — Yeas 16, Nays 21. Other amendments were moved, and the debate continued for days.

February 23d, Mr. Davis moved as a substitute three resolutions, — that all negroes and mulattoes, by whatever term designated, in the military service of the United States, be discharged and disarmed, and also providing for payment to loyal owners on account of slaves taken into the service. Lost, — Yeas 7, Nays 30.

Mr. Collamer, of Vermont, having moved an amendment providing for a certain class of cases, Mr. Sumner, February 25th, brought forward his amendment in the following terms: —

"*Provided, also,* That all persons whose papers of enlistment shall show that they were enlisted under the Act of Congress of July, 1861, shall receive from the time of their enlistment the pay promised by that statute."

In proposing this again, he said: "I believe, if any persons have enlisted in the national service, and, through any ambiguity or misinterpretation of legislation, their rights have been drawn in question, it belongs to Congress, as guardian and conservator of the rights of every citizen, to see that they have the proper remedy." The amendment was adopted, — Yeas 19, Nays 18.

February 29th, Mr. Fessenden addressed the Senate in explanation of his position. He had been from the beginning in favor of placing colored soldiers on the same footing as white; but he objected to the attempt to provide for exceptional cases on this general bill, and he asked, "whether we should have had such an uproar throughout the country, if this amendment had been in regard to three or four or more white regiments, to go back and pay them an additional sum from the time of their enlistment, and the principle had been objected to."

Mr. Sumner, in reply, reviewed the case, and in conclusion said: —

FROM the question of law I pass to that other question which occupied the attention of the Senator from Maine, as to when and where we should meet this obligation. He says, Bring in a separate bill. That was said the other day. I say, Meet it whenever it appears. It is in itself a case of such absolute and overwhelming justice that the Senate ought not to postpone it for a single day,— especially ought not to postpone it, when it has under consideration a bill so entirely germane as the present. If it were a bill concerning the Pacific Railroad or the sale of gold, it might be questionable whether the proposition should be ingrafted upon it; but, as it is a bill to put colored troops on an equality with other troops in the national service, I say that the pending proposition is perfectly germane, and, being in itself of commanding justice, ought not to be postponed. It is a common device of enemies to object to a measure on a particular bill. For myself, I wish it understood that I am for the proposition on any bill and at any time.

Then, on motion of Mr. Grimes, of Iowa, the joint resolution was recommitted to the Committee on Military Affairs.

March 2d, Mr. Wilson reported a new bill, in lieu of the original joint resolution so much discussed, which, besides the provision in the joint resolution, contained an additional section in substantial conformity with Mr. Sumner's proviso, giving to all persons of color enlisted and mustered into the service of the United States the pay allowed by law to other volunteers in the service, from the date of their muster, if it had been pledged or promised to them by any officer or person, who, in making such pledge or promise, acted by authority of the War Department; and the Secretary of War was to determine any question of fact arising under this provision.

March 8th, the bill being under consideration, Mr. Davis moved an additional section, giving to loyal owners of slaves taken into service compensation to be determined by commissioners appointed by the Circuit Court of the United States.

March 9th, Mr. Davis made an elaborate speech vindicating property in slaves.

March 10th, after further debate, the additional section of Mr. Davis was rejected, — Yeas 6, Nays 31, — and also another amendment moved by him. The bill then passed the Senate, — Yeas 31, Nays 6. In the House of Representatives other matters were substituted for the provisions which had occupied the attention of the Senate, as the object was already accomplished in another way.

April 22d, the Army Appropriation Bill being under consideration, Mr. Wilson moved, as an amendment, the bill to equalize the pay of soldiers which had passed the Senate. Mr. Fessenden thought that "the measure ought to be passed, and passed at once." If the Senate would waive the objection to putting it on the Appropriation Bill, he would not object. The amendment was agreed to, — Yeas 31, Nays 5.

Then followed another series of struggles. The House of Representatives made amendments which were disagreed to by the Senate. Then came no less than three different Committees of Conference. The report of the last Committee, which was made June 10th, contained the following substitute for the Senate amendment: —

"That all persons of color who were free on the nineteenth day of April, 1861, and who have been enlisted and mustered into the military service of the United States, shall, from the time of their enlistment, be entitled to receive the pay, bounty, and clothing allowed to such persons by the laws existing at the time of their enlistment. And the Attorney-General of the United States is hereby authorized to determine any question of law arising under this provision. And if the Attorney-General aforesaid shall determine that any of such enlisted persons are entitled to receive any pay, bounty, or clothing in addition to what they have already received, the Secretary of War shall make all necessary regulations to enable the pay department to make payment in accordance with such determination."

Mr. Sumner observed that the report did not seem to settle the question in issue; that, if he were merely looking after the interests of his own constituents and the regiments organized in Massachusetts, he might rest satisfied; but that he was unwilling to sanction a settlement which did not embrace all the colored troops. The debate extended into the next day, when Mr. Sumner remarked: —

I STATED last night that in my opinion this report undertook to conclude something, but did not conclude it. On further consideration, I am satisfied that I was not much mistaken. It is a conclusion in which noth-

ing is concluded. I may say, too, that it is not entirely creditable to Congress, and, so far as I now accept the result, it will be with much reluctance. It would have better become Congress to recognize a solemn obligation toward those now baring their breasts for us in battle, and falling on the ramparts of the enemy, rather than question their title to pay as soldiers, which I believe as strong for them as for any white soldiers. I regret sincerely that their title has not been positively recognized in the text of a statute; but, after effort in both branches, and the appointment of several committees of conference, such recognition has failed. I despair of obtaining it, at least on the present bill. On that account I am induced to look critically at the proposition before us, to see whether this affords any measure of justice. In one sense it affords nothing; and I believe the Senator from Maine [Mr. MORRILL], who was on the last committee, will not differ from me on that point; but it does distinctly and unequivocally refer the question to the judgment of the Attorney-General of the United States. Substantially Congress agrees to take his opinion. He has already given it. I have it in my hand, in a communication dated April 23, 1864, on a case submitted by the President.

"I do not know that any rule of law, constitutional or statutory, ever prohibited the acceptance, organization, and muster of 'persons of African descent' into the military service of the United States as enlisted men or volunteers. But whatever doubt might have existed on the subject had been fully resolved before this order was issued, by the 11th section of the Act of July 17, 1862, chap. 195, which authorized the President to employ as many persons of African descent as he might deem necessary and proper for the sup-

pression of the Rebellion, and for that purpose to organize and use them in such manner as he might judge best for the public welfare."

And then again he says: —

"I have already said that I knew of no provision of law, constitutional or statutory, which prohibited the acceptance of persons of African descent into the military service of the United States; and if they could be lawfully accepted as private soldiers, so also might they be lawfully accepted as commissioned officers, if otherwise qualified therefor. But the express power conferred on the President by the 11th section of the Act of July 17, 1862, chap. 195, before cited, to employ this class of persons for the suppression of the Rebellion as he may judge best for the public welfare, furnishes all needed sanction of law to the employment of a colored chaplain for a volunteer regiment of his own race."[1]

By the report before the Senate, it is declared as follows: "And the Attorney-General is hereby authorized to determine any question of law arising under this provision." In the full confidence that we shall at last, through the Attorney-General, obtain that justice which Congress has denied, I consent to give my vote for the report.

The report was concurred in.[2] The Attorney-General, Mr. Bates, as Mr. Sumner anticipated, affirmed the equal rights of the colored soldiers.[3]

[1] Opinions of the Attorneys-General, Vol. XI. pp. 38 - 40.

[2] See Acts of 38th Cong. 1st Sess., Ch. 124, Sec. 4: Statutes at Large, Vol. XIII. p. 129.

[3] Opinions of the Attorneys-General, Vol. XI. p. 53, July 14, 1864.

OPENING OF THE STREET-CARS TO COLORED PERSONS.

SPEECHES IN THE SENATE, ON VARIOUS PROPOSITIONS, FEBRUARY 10, MARCH 17, JUNE 21, 1864.

THE opening of the street-cars in Washington constitutes a special chapter of effort, which, beyond its local influence, was important as an example to the country.

February 27, 1863, the Senate having under consideration the bill to authorize the Alexandria and Washington Railroad Company to extend their road across the Potomac River and through the city of Washington to the Baltimore and Ohio Railroad station, Mr. Sumner moved an amendment in the following words: —

"*And provided, also*, That no person shall be excluded from the cars on account of color."

In making this motion, he called attention to what seemed to him a new illustration of the barbarism of Slavery. An aged colored person had been excluded from the cars and dropped in the mud. He thought the incident discreditable, and that it was the duty of Congress to interfere. The following dialogue then ensued.

MR. HOWE (of Wisconsin). I should like to ask the Senator from Massachusetts, as a question of law, whether, if this railroad company, being common carriers, should drop any person or refuse to carry any person who offered them their fare, they would not be liable as the law now stands, without any express enactment?

MR. SUMNER. If you ask me the question as a lawyer, I should say they would be liable; but the experience here, as I believe, is, that this liability is not recognized. The Senator knows well, that, under the influence of Slavery, human rights are disregarded, and those principles of law which he recognizes are set aside. Therefore it becomes the duty of Congress to interfere and specially declare them.

MR. HOWE. Would the effect of the amendment be any more than a re-enactment of the existing law?

MR. SUMNER. That was said of the Wilmot Proviso, as the Senator will remember.

The question being taken by yeas and nays, resulted, Yeas 19, Nays 13; so the amendment was agreed to. It was concurred in by the House, and approved by the President, March 3, 1863.

This provision, though applicable to a single road, seemed to decide the principle. But it was not so regarded by the other railroads in Washington, which continued to exclude colored persons, often under painful circumstances.

February 10, 1864, Mr. Sumner called attention to this subject by the following resolution: —

"*Resolved*, That the Committee on the District of Columbia be directed to consider the expediency of further providing by law against the exclusion of colored persons from the equal enjoyment of all railroad privileges in the District of Columbia."

Mr. Sumner explained the resolution.

MR. PRESIDENT, — It is necessary that I should call attention to a recent outrage which has occurred in this District. I do it with great hesitation. At one moment I was inclined to keep silence, believing that the good name of our country required silence; but since it has already found its way into the journals, I cannot doubt that it ought to find its way into this Chamber.

An officer of the United States, with the commission of Major, with the national uniform, has been pushed from a car on Pennsylvania Avenue for no other offence than that he was black. Now, Sir, I desire to say openly that we had better give up railroads in the national capital, if we cannot have them without such an outrage upon humanity, and upon the national character. An incident like that, Sir, is worse at this moment than defeat in battle. It makes enemies for our cause abroad, and sows distrust. I hope, therefore, that the Com-

mittee on the District of Columbia, — I know the disposition of my honorable friend, the Chairman of that Committee, — in the bills we are to consider relative to the railroads in this District, will take care that such safeguards are established as will prevent the repetition of any such wrong.

In reply to Mr. Hendricks, of Indiana, Mr. Sumner spoke again.

MR. PRESIDENT, — I am sure that the Senator from Indiana [Mr. HENDRICKS] is mistaken in regard to the provision for colored people. There may be here and there, now and then, once in a long interval of time, a car which colored people may enter; but any person traversing the avenue will see that those cars appear very rarely; and if any person takes the trouble to acquaint himself with the actual condition of things, he will learn that there are great abuses and hardships, particularly among women, growing out of this outrage. I use plain language, Sir, for it is an outrage. It is a disgrace to this city, and a disgrace also to the National Government, which permits it under its eyes. It is a mere offshoot of the Slavery which, happily, we have banished from Washington.

Now go back to the facts on which I predicated my motion. The Senator from Iowa [Mr. GRIMES] has referred to the colored officer. I have in my hand his letter, addressed to his military superior, making a report of the case, and, as it is very brief, I will read it.

"WASHINGTON, D. C., February 1, 1864.

"SIR, — I have the honor to report that I have been obstructed in getting to the Court this morning by the con-

ductor of car No. 32 of the Fourteenth Street line of the city railway.

"I started from my lodgings to go to the hospital I formerly had charge of, to get some notes of the case I was to give evidence in, and hailed the car at the corner of Fourteenth and I Streets. It was stopped for me, and, when I attempted to enter, the conductor pulled me back, and informed me that I must ride on the front with the driver, as it was against the rules for colored persons to ride inside. I told him I would not ride on the front, and he said I should not ride at all. He then ejected me from the platform, and at the same time gave orders to the driver to go on. I have, therefore, been compelled to walk the distance in the mud and rain, and have also been delayed in my attendance upon the Court.

"I therefore most respectfully request that the offender may be arrested and brought to punishment.

"I remain, Sir, your obedient servant,

"A. T. AUGUSTA, M. B.,
"*Surgeon Seventh U. S. Colored Troops.*

"CAPTAIN C. W. CLIPPINGTON, *Judge Advocate.*"

In my opinion, the writer of this letter had just as much right in that car as the Senator from Indiana, and it was as great an outrage to eject him as it would be to eject that Senator. I go further, and I say — pardon the illustration — that the ejection of that Senator would not bring upon this capital half the shame that the ejection of this colored officer necessarily brings upon the capital. I do not mean, of course, to make the remark personal; but, as the Senator from Indiana has entered into this discussion, and chooses to vindicate this inhumanity, I allude to him personally.

The resolution was adopted, — Yeas 30, Nays 10.

February 24th, Mr. Willey, of West Virginia, from the Committee on the District of Columbia, made a report in the following terms.

"That the Act entitled 'An Act to incorporate the Washington and Georgetown Railroad Company,' approved May 17, 1862, makes no distinction as to passengers over said road, or as to any of the privileges of said road, on account of the color of the passenger, and that, in the opinion of the Committee, colored persons are entitled to all the privileges of said road which any other persons have, and to all the remedies for any denial or breach of such privileges which belong to any other persons. The Committee, therefore, ask to be discharged from the further consideration of the premises."

February 25th, Mr. Sumner called attention to this report, and moved to reconsider the vote accepting it. Mr. Grimes stated that "the Committee hold that every person has a right to ride in the cars, and that a colored person has the same remedies open to him for any infringement of his rights by the Company as anybody else." Mr. Sumner then inquired, "whether it was the understanding of the Committee that the ejection of a colored person from a car was illegal." Mr. Grimes replied, "As I understood it." Mr. Sumner. "That the ejection was illegal?" Mr. Grimes. "Yes, Sir." Mr. Reverdy Johnson united in this conclusion. Mr. Willey said: "The law is now full and perfect in all its provisions and adaptations to secure the colored persons in the enjoyment of the privileges of this railroad." Mr. Wilson, of Massachusetts, said: "I think in law he is right, but in practice it is an undeniable fact that the spirit of the old law and the old practices still lingers to some extent here in the District." Mr. Saulsbury, of Delaware, followed: "I most heartily approve of the action of the officer on board that railroad-car. I think he deserved the thanks of the community. When these negroes go about sticking their heads into railroad-cars, and among white people, and into the Supreme Court Room, I think an officer is perfectly right in telling them they have no business there." Mr. Sumner remarked as follows.

AFTER the declarations made to-day, I am, at least for the present, satisfied, and shall not proceed further with my motion. I was particularly grateful to the Senator from Maryland for his very explicit statement of the law. I do not doubt he is entirely right. It has always been my opinion. I am glad to have it confirmed by that distinguished Senator and lawyer. I am also grateful to the Senator from West Virginia, who made

the report, and who has so explicitly stated his own convictions, and, as I understand him, also the unanimous opinion of the Committee, to the effect that these people have legal rights precisely as white persons to the full enjoyment of all the privileges of the railroad in this District. If they have such legal rights, they are at this moment unquestionably exposed to what I must call outrage. If a white person were ejected from the cars on account of his skin, we should all feel that it was an outrage. Is it any less an outrage because the person ejected is simply guilty of a different skin? I confess, that, to my mind, it is a greater outrage, because obligations are greater in proportion to the humility and weakness of those with whom we deal.

But, Sir, I have no desire to proceed further in this question. I am for the present satisfied. My hope, however, is, that the railroad corporation will at once take notice, and act according to law.

Mr. Sumner then withdrew his motion.

In the face of this report, the exclusion of colored persons continued, often attended by intolerable outrage. Aged persons were thrust into the street. At last an opportunity occurred of bringing this question to a vote in the Senate.

March 16, 1864, the Senate had under consideration a bill to incorporate the Metropolitan Railroad Company in the District of Columbia, sometimes known as the F Street Road, when Mr. Sumner moved the following amendment: —

"*Provided*, That there shall be no regulation excluding any person from any car on account of color."

A debate ensued, in which Mr. Saulsbury, of Delaware, and Mr. Reverdy Johnson, of Maryland, earnestly opposed the amendment. March 17th, the latter, while acknowledging that there was nothing in the bill giving "authority to exclude passengers at all," insisted that colored persons so excluded should be remitted to the courts, and he did not see "why it is necessary to provide more special guaranties

for the black man than are provided for the white man"; "if the black man is improperly excluded from one of these cars, ... he has the right to go to the courts and seek his remedy there, and the white man has no greater right"; that Mr. Sumner "might just as well propose to pass a law providing that these black men and black women shall have the same right to visit the Presidential mansion on public occasions as the white men and the white women"; and he then discussed the questions of social and political equality, insisting that those just escaped from Slavery "are not the people to exercise the elective franchise, and to mix in society with the educated classes, of which and from which the public councils of the country should always be composed and taken."

Mr. Sumner replied: —

MR. PRESIDENT, — The question before the Senate is very simple. It is plain as one of the Ten Commandments. But the Senator from Maryland, with that nimbleness of speech which belongs to him, while undertaking to discuss it, has ranged over a very extensive field. He has treated the Senate to a discourse on almost everything, and something else also, — the elective franchise, social privileges of the Presidential mansion, the equality of races, the intermarriage of races, the state of Slavery in Maryland, also in some other States, and then the state of Slavery generally. Now, Sir, I shall not follow him on any of those topics. My desire is to present the precise point in issue. The Senate will then be prepared to vote.

But the Senator from Maryland will allow me to remind him that he seems to exhibit a rare inconsistency, — first, in declaring the absolute right of colored people to a seat in the cars, and then arguing, that, on every consideration of social life and of principle, they ought not to be admitted to any such privilege. The two parts do not go together. If colored people have the legal right to enter these cars, why does the Senator argue

that they ought not to have that right? I agree with the Senator in the first point. They have the legal right to enter these cars, and the proprietors are trespassers, when they exclude them. Here I agreed with the Senator the other day. To my mind it is clear, because any other conclusion authorizes a corporation to establish a caste offensive to religion and humanity, injurious to a whole race now dwelling among us, and bringing shame upon our country.

The Senator asks, why, as I accept this conclusion, do I bring forward the present proposition? To this there are two answers, either of which is sufficient. The first is, that in the last railroad statute passed by Congress this provision was introduced, and I have heard of no complaint or trouble from it. In that now before us let us introduce the same provision, and make the two uniform. That is one reason. But the better reason is, that, while, beyond all question, colored persons have the legal right, even without this amendment, yet that legal right has been drawn in question. In point of fact, they are excluded from the cars. The Senator from Maryland refers to one case, because it has become well known. I am familiar with many other cases. They are brought to my attention almost daily. There is, then, at this moment, an existing abuse. Colored persons are kept out of their rights. But we cannot afford, at this crisis of our history, to sanction injustice. Every such act rises in judgment against us, and hangs on the movements of our armies, checking even the currents of victory.

The Senator admits their rights, but he says, Let them go to the courts. Sir, what is that for a poor, humble person, without means and without consideration? The

Senator knows something of the law's delay and the law's expense; and I ask him whether it is just to subject an oppressed people to this additional oppression, when, by a few words, Congress, now in session, can overturn the wrong.

MR. JOHNSON. Will the Senator permit me to ask him a question by way of reply? Suppose the amendment is adopted; if it will not give them a greater right than they have now, and the Company refuse to let them enjoy the right, what is their remedy? They must go to the courts. I suppose there is no other remedy. You do not provide that the charter shall be forfeited at once.

MR. SUMNER. I know very well that they may, in the last resort, be obliged to go to the courts; but I know that it will be more difficult for the Company to exclude them in the face of a positive statute than when their rights are simply founded on *inference*. The positive words which I propose leave no loophole for doubt. They must be obeyed.

There is nothing more common in legislation than, in case of doubt as to the meaning of a statute, or of the Common Law, to remove it by what is well known as a "declaratory" statute. I have in my hands a work of authority, which the Senator knows well, Dwarris on Statutes, from which I read:—

"And first of declaratory acts. These are made where the old custom of the kingdom is almost fallen into disuse or become disputable, in which case the Parliament has thought proper, *in perpetuum rei testimonium*, and for avoiding all doubts and difficulties, to declare what the Common Law is and ever hath been." [1]

[1] Treatise on Statutes (2d edit.), Part II. p. 478.

Are not these words completely applicable to the case before us? What should be the custom is, according to these words, "almost fallen into disuse, or become disputable." I say, therefore, again, following these words, "for avoiding all doubts and difficulties," it is the duty of Congress "to declare" what the law of the land is.

Again, in another place, this same authority, speaking still further of declaratory statutes, says: —

"Acts to explain laws are properly acts of interpretation by legislative authority, — or, to borrow an expression from the writers on the Roman Law, they are acts of *authentic interpretation.*" [1]

I ask the attention of the Senator to the expression, "they are acts of *authentic interpretation.*" Now, Sir, what I desire is, that the Senate shall give an authentic interpretation to the law. To do this it is not needful to range over the whole field of history, of morals, or of politics, in imitation of the Senator, or to discuss the equality of races, or their fortunes in the future; but it is enough for us to become acquainted with the existing abuse, every day under our own eyes, in the streets of this capital, and then to apply the remedy. Beyond all question, there is an abuse. The remedy is simple, and I cannot doubt that it will be effective.

Listening to the objections which this measure has encountered, I am reminded of those so often brought against the Wilmot Proviso. Sometimes it was said that Slavery could not go into the Territories without positive statute, and that therefore the prohibition was unnecessary. But it generally happened that those who opposed the positive prohibition were indifferent to the

[1] Dwarris, Treatise on Statutes (2d edit.), Part II. p. 478.

great question. No, Sir; there can be but one true rule. It is this: the rights of colored persons must be placed under the protection of positive statute, warning their oppressors against continued outrage.

The question being taken on Mr. Sumner's amendment, it was adopted, — Yeas 19, Nays 17. The House concurred, and the President approved the bill.

Thus was another road brought within the sphere of this prohibition. But the exclusion was continued on the main road in Pennsylvania Avenue.

June 21st, the Senate having under consideration a bill to amend the charter of the Washington and Georgetown Railroad Company, Mr. Sumner moved the following amendment: —

"*And provided, further*, That there shall be no exclusion of any person from any car on account of color."

Debate ensued. Mr. Sherman, of Ohio, thought "the amendment ought not to be adopted." Mr. Hendricks, of Indiana, thought it tended to depreciate the value of investments made on the faith of former legislation. Mr. Willey, of West Virginia, declared his opposition, saying, "It is a matter to be regulated by the interests of the Company, the convenience of the people, and especially the tastes of the people." Mr. Powell, of Kentucky, said: "If the Senator from Massachusetts is such a vehement friend of this down-trodden race, as he is a lawyer, why did he not undertake their case, and propose to argue it for them before the courts? That would have indicated that he really felt for the negro. . . . . The Senator shows his devotion to this down-trodden race here, and only in words. . . . . The Senator's staple is this fanatical idea. He wants this little hobby to ride through Massachusetts on, and to feed a fanatical flame there. He can fool nobody here with this kind of thing. Take the negro out of the Senator's vocabulary, and, rich as it is, it would be exceedingly barren." Mr. Trumbull, of Illinois, also opposed the amendment. In the course of the debate, Mr. Sumner spoke as follows, especially in reply to Mr. Trumbull.

MR. PRESIDENT, — The Senator from Illinois [Mr. TRUMBULL], in former days, was a sincere, intelligent, devoted supporter of the Wilmot Proviso. As I under-

stand that Proviso, it was simply a prohibition of Slavery in the Territories. Now I know not whether the Senator held, as I did, that, even without that prohibition, yet, by a strict interpretation of the Constitution, Slavery could not go into the Territories. I presume he did; most of us did. For myself, I held it resolutely and sincerely. I always regarded the Wilmot Proviso, if the Constitution were properly interpreted, as mere surplusage, sheer supererogation; and yet I never hesitated, in season or out of season, to vindicate it; and I believe the Senator never hesitated, in season or out of season, to do the same. I remember that my earliest admiration of that Senator was founded on his brave and able support of that very prohibition. Not then was he deterred from a humane provision because without it, according to his interpretation of the Constitution, Slavery could not enter the Territories. Nor was he deterred because the provision might be offensive to persons of weak nerves. No, Sir; openly and courageously he maintained the principle that Slavery must be prohibited. And on the same principle — if I may pass from great things to smaller, I admit, but not small — I insist that this proviso should also be adopted.

Our experience shows that the law as the Senator expounds it is not so accepted by this railroad corporation. He knows as well as I that colored persons are daily insulted. Some of these victims will compare in respectability of conduct with any whom I now have the honor to address. My colleague alluded to a colored clergyman whom he saw thrust out only the other day. We know of an officer of the United States, wearing the national uniform, thrust out; and the Senator from Illinois will allow all these things to be done, and not in-

terfere. He tells us that it is contrary to law, and yet he allows it to proceed under the very eyes of the Senate. Sir, I insist that the Senate, when such outrage occurs, shall show that it has power, and is willing to exercise it on the side of justice.

But the Senator reminds us that in other days the Fugitive Act was passed here, and made especially offensive; and he pleads with us not to imitate that bad example, by introducing anything that may be offensive. I do not like the comparison of the Senator. Does he not know well that everything introduced into the Fugitive Slave Bill was in the interest of Slavery, and contrary to every sentiment of humanity, and that it was intended to give offence? The proposition now moved is opposite in character. It is to sustain the principles of humanity, to uphold human rights, to vindicate human equality, and with no purpose of offence,—none, not the least. The illustration of the Senator is entirely out of place. True it is that in those other days we were offended, and it was part of the hardships to which we were exposed. As, in the days which preceded our Revolution, the British officers said they would cram the stamps down the throats of the American people, so, in the same malignant spirit, the Slave-Masters insisted upon cramming Slavery down the throats of the Senate and the country. There was nothing but brutality then. Slavery in all its features is bad, but one of its most odious manifestations was the revolting insensibility to every sentiment of delicacy and humanity which it created in its supporters.

Sir, the Senator from Illinois knows well that it is in a very different spirit that propositions like the present are brought forward. It is always in the interest

of human rights, and I need not say to that Senator, so far as I am concerned, with no other purpose than that patent in the proposition itself, and with no idea of offending any human being, — on the contrary, with a desire to avoid offence, if I possibly can. In that spirit I wish to do my duty on this floor. I would never give offence to any one, here or elsewhere, if I knew how to avoid it, while in all things I faithfully discharge my public duty.

The debate continued, when Mr. Grimes, of Iowa, said he should like to have Mr. Sumner answer one question. "Suppose we pass this amendment and put it into the law, and the Company goes on and does exactly as it has been doing, excluding these men, what are these colored men going to do? Have they not got to go to law then? Will they not be compelled to enforce their rights in court? Will they not be compelled to employ lawyers? If that be so, what advantage will it be to them to adopt this amendment under the present condition of things?"

MR. SUMNER. I will answer. Because the Company will not dare to continue this outrage in the face and eyes of a positive provision of statute. That is the answer.

On the Yeas and Nays, the amendment was lost, — Yeas 14, Nays 16, — several Republicans uniting with the Democrats against it.

At the next stage of the bill, Mr. Sumner renewed his amendment, when it was adopted, — Yeas 17, Nays 16. The bill passed the Senate, and was the subject of conference between the two Houses, but it never became a law.

January 17, 1865, the Senate having under consideration the bill to incorporate the Baltimore and Washington Depot and Potomac Ferry Railway Company, Mr. Sumner moved the same amendment, which was adopted, — Yeas 24, Nays 6. This bill was passed by the Senate, but it never became a law.

February 4, 1865, the Senate having under consideration a bill to amend the charter of the Metropolitan Railroad Company, Mr. Sumner moved the following amendment: —

"That the provision prohibiting any exclusion from any car on account of color, already applicable to the Metropolitan Railroad, is hereby extended to every other railroad in the District of Columbia."

This amendment became necessary in order to reach the Washington and Georgetown Railroad Company. It was opposed by Mr. Dixon, of Connecticut, Mr. Conness, of California, and Mr. Hale, of New Hampshire, the last regarding it in the nature of general legislation on a private act. Mr. Sumner replied, that it was needed, in order to bring the Metropolitan Railroad on an equality with the other roads, inasmuch as Congress had already imposed the prohibition upon that road; and, secondly, that it was germane, inasmuch as the Senate might engraft upon any railroad charter any proposition, special or general, concerning the subject-matter.

The amendment was lost, — Yeas 19, Nays 20.

At the next stage of the bill, Mr. Sumner renewed his amendment. February 6th, Mr. Dixon, Chairman of the Committee on the District of Columbia, withdrew his opposition, saying: "I opposed it on the ground that it seemed to conflict with the rights of another Company, not now before the Senate [the Washington and Georgetown Railroad Company]; but since that time I have seen the managers and controllers of that Company, and find that they are unwilling to contend on this subject with what they consider to be the public opinion. They therefore make no objection to it, and I shall make none."

The amendment was adopted, — Yeas 26, Nays 10. The bill as amended passed the House and was approved by the President, so that it became illegal for any railroad in the District of Columbia to exclude any person from any car on account of color.

The Washington and Georgetown Railroad did not promptly recognize the law. Colored persons were excluded from their cars, when Mr. Sumner addressed a letter to the President of the road, calling attention to the contumacy of the Company, and announcing his purpose, if it continued, to move, at the next session of Congress, the forfeiture of the charter. At the same time he addressed a communication to the District Attorney, asking him to proceed against the Company. At last the law was recognized, and from that date all the street-cars of Washington have been open to colored persons.

WRONG AND UNCONSTITUTIONALITY OF FUGITIVE SLAVE ACTS.

REPORT IN THE SENATE OF THE COMMITTEE ON SLAVERY AND FREEDMEN, FEBRUARY 29, 1864.

FEBRUARY 29, 1864, Mr. Sumner reported from the Committee on Slavery and Freedmen a bill to repeal all acts for the rendition of fugitive slaves. Accompanying this bill was the following report, of which ten thousand extra copies were ordered to be printed for the use of the Senate, together with the views of the minority, by Mr. Buckalew.

The debate on this subject, and the final repeal of all Fugitive Slave Acts, appear at a later date.[1]

THE Select Committee on Slavery and the Treatment of Freedmen, to whom were referred sundry petitions asking for the repeal of the Fugitive Slave Act of 1850, and also asking for the repeal of all acts for the rendition of fugitive slaves, have had the same under consideration, and ask leave to make the following report.

TWO Fugitive Slave Acts still exist unrepealed on our statute-book. The first, dated as long ago as 1793, was preceded by an official correspondence, supposed to show necessity for legislation.[2] The second, belonging to the compromises of 1850, was introduced by a report from Mr. Butler, of South Carolina, at that time Chairman of the Judiciary Committee of the Sen-

1 *Post*, pp. 403–418.

2 American State Papers, Miscellaneous, Vol. I. pp. 38–43.

ate.[1] In proposing the repeal of all legislation on the subject, it seems not improper to imitate the latter precedent by a report assigning briefly the reasons governing the Committee.

RELATION BETWEEN SLAVERY AND THE FUGITIVE SLAVE ACTS.

THESE Acts may be viewed as part of the system of Slavery, and therefore obnoxious to the judgment which Civilization is accumulating against this Barbarism; or they may be viewed as independent agencies. But it is difficult to consider them in the latter character alone; for if Slavery be the offence which it doubtless is, then must it infect all the agencies it employs. Especially at this moment, when, by common consent, Slavery is recognized as the origin and life of the Rebellion, must all its agencies be regarded with more than ordinary repugnance.

If in time of peace all Fugitive Slave Acts were offensive, as requiring what humanity and religion both condemn, they must at this moment be still more offensive, when Slavery, in whose behalf they were made, has risen in arms against the National Government. It is bad enough, at any time, to thrust an escaped slave back into bondage: it is absurd to thrust him back at a moment when Slavery is rallying all its forces for the conflict it has madly challenged. The crime of such a transaction is not diminished by its absurdity. A slave with courage and address to escape from his master has the qualities needed for a soldier of Freedom; but existing statutes require his arrest and sentence to bondage.

[1] Senate Reports, 31st Cong. 1st Sess., No. 12.

In annulling these statutes, Congress simply withdraws an irrational support from Slavery. It does nothing against Slavery, but merely refuses to do anything for it. In this respect the present proposition differs from all preceding measures of Abolition, as refusal to help an offender on the highway differs from an attempt to take his life.

And yet it cannot be doubted that the withdrawal of Congressional support must contribute effectively to the abolition of Slavery: not that, at the present moment, Congressional support is of any considerable value, but because its withdrawal would be an encouragement to that universal public opinion which must soon sweep this Barbarism from our country. It is one of the felicities of our present position, that by repealing all acts for the restitution of slaves we may hasten the happy day of Freedom and of Peace.

Regarding this question in association with the broader question of Universal Emancipation, we find that every sentiment or reason or argument for the latter pleads for the repeal of these obnoxious statutes, but that the difficulties sometimes supposed to beset Emancipation do not touch the proposed repeal, so that we might well insist upon the latter, even if we hesitated with regard to the former. The Committee find new motive to the recommendation they now make, when they see how important its adoption must be in securing the extinction of Slavery.

It is not enough to consider the proposed measure in its relations to Emancipation. Even if Congress be not ready to make an end of Slavery, it cannot hesitate to make an end of all Fugitive Slave Acts. Against the latter there are cumulative arguments of Constitutional

Law and of duty, beyond any to be arrayed against Slavery itself. A man may even support Slavery, and yet reject the Fugitive Slave Acts.

THE FUGITIVE CLAUSE IN THE CONSTITUTION, AND THE RULES FOR ITS INTERPRETATION.

THESE Acts profess to be founded upon certain words of the Constitution. On this account we must consider these words with a certain degree of care. They are as follows.

"*No person* held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but *shall be delivered up on claim of the party to whom such service or labor may be due.*"[1]

John Quincy Adams has already remarked that in this much debated clause the laws of grammar are violated in order to assert the claim of property in man; for the verb "shall be delivered up" has for nominative "no person," and thus the grammatical interpretation actually forbids the rendition. It is on this jumble and muddle of words that a superstructure of wrong is built. Even bad grammar may be disregarded, especially in behalf of human rights; but it is worthy of remark, that, in this clause of the Constitution, an outrage on human rights was begun by an outrage on language.

Assuming that the clause is not invalidated by bad grammar, it is often insisted, and here the Committee concur, that, according to authoritative rules of inter-

[1] Art. IV. Sec. 2, Par. 3.

pretation, it cannot be considered applicable to fugitive slaves; since, whatever the intention of its authors, no words were employed positively describing fugitive slaves *and nobody else.* Obviously, this clause, on its face, is applicable to apprentices, and it is known historically that under it apprentices have been delivered up on the claim of the party to whom "such service or labor" was due. It is therefore only by discarding its primary signification, and adopting a secondary signification, that it can be made to embrace fugitive slaves. On any common occasion, not involving a question of human rights, such secondary signification might be supplied by intendment; but it cannot be supplied to limit or deny human rights, especially to defeat Liberty, without a violation of fundamental rules which constitute the glory of the law.

This principle is common to every system of civilized jurisprudence; but it has been nowhere expressed with more force than in the maxims of the Common Law and the decisions of its courts. It entered into the remarkable argument of Granville Sharp, which preceded the judgment extorted from Lord Mansfield, and led him to exclaim, in words strictly applicable to the Constitution of the United States, "The word *slaves*, or anything that can justify the enslaving of others, is not to be found, God be thanked," in the British Constitution.[1] It entered into the judgment pronounced at last by Lord Mansfield, under the benevolent pressure of Granville Sharp, in the renowned Somerset case, where this great magistrate grandly declared that Slavery could not exist in England. His words cannot be too often quoted as an illustration of the true rule of interpretation. "The

[1] Hoare's Memoirs of Sharp, p. 88.

state of Slavery," he said, "is of such a nature, that it is incapable of being introduced on any reasons moral or political, *but only by positive law*. . . . . It is so odious, that nothing can be suffered to support it *but positive law*."[1] Therefore the authority for Slavery cannot be derived from any words of doubtful import. Such words are not "positive." And clearly, by the same rule, *if the words are susceptible of two different significations, that must be adopted which is hostile to Slavery*. This same cardinal principle, thus announced by the Chief Justice of England, has been echoed by the Chief Justice of the United States, being none other than Marshall, speaking for our own Supreme Court, when he said, "*Where rights are infringed*, ... the legislative intention must be expressed with *irresistible clearness* to induce a court of justice to suppose a design to effect such objects."[2] In a clause capable of *two meanings* there can be no such "irresistible clearness" as would justify an infringement of human rights.

But Lord Mansfield and Chief Justice Marshall were simply giving practical application to those venerable maxims cherished in America as in England. It is not necessary to repeat them at length. They are substantially embodied in the words, *Angliæ jura in omni casu Libertati dant favorem*, — "The Laws of England, *in every case*, show favor to Liberty"; and also in those other vigorous words of Fortescue, *Impius et crudelis judicandus est qui Libertati non favet*, — "He is to be adjudged impious and cruel who does not favor Liberty."[3] By such lessons have all who administer justice been warned for centuries against the sacrifice of human rights. Even

[1] Howell's State Trials, Vol. XX. col. 82.
[2] Fisher *v.* Blight, 2 Cranch, S. C. R., 390.
[3] De Laudibus Legum Angliæ, Cap. XLII.

Blackstone, whose personal sympathies were with power, was led to declare, in most suggestive words, worthy of a commentator on English Law, that "the law is always ready to catch at anything in favor of Liberty."[1] And Hallam, whose instincts were always for Freedom, has adopted and vindicated this rule of interpretation as a pole-star of Constitutional Liberty. "It was," says this great author, "by dwelling on all authorities in favor of Liberty, *and by setting aside those which made against it,* that our ancestors overthrew the claims of unbounded prerogative."[2] Nor can it be doubted that this conduct helped to build those great English safeguards of Freedom which have been an example to mankind.

This rule has never received plainer illustration than in the writings of Dr. Webster, the eminent lexicographer. In a tract bearing date 1795, long before the heats engendered by the Fugitive Slave Act, he used language which, if applied to our Constitution, must defeat every interpretation favorable to Slavery. "Where there are two constructions," he says, "the one favorable, the other odious, *that which is odious is always to be rejected.*"[3] This principle, thus sententiously expressed by the American lexicographer, may be found also in the judgments of courts and the writings of civilians without number. It is one of the commonplaces of interpretation. Lord Coke, our master in English law, tells us, that, where words "may have a double intendment, and the one standeth with law and right, and

[1] Commentaries, Vol. II. p. 94.

[2] Constitutional History of England (London, 1829), Ch. XVI. Vol. III. p. 380.

[3] Vindication of the Treaty with Great Britain, No. 2: Papers on Political, Literary, and Moral Subjects, p. 186.

the other is wrongful and against law, the intendment that standeth with law shall be taken."[1] And Vattel, a master in International Law, says that "we should particularly regard the famous distinction of things *favorable* and things *odious*," and then he assumes that we must "consider as *odious* everything that in its own nature is rather hurtful than of use to the human race."[2] But the clause of the Constitution which has been made the apology of the Fugitive Slave Act is clearly open to "two constructions," according to the language of Dr. Webster, or "a double intendment," according to the language of Lord Coke, or one "favorable" and the other "odious," according to Vattel. Thus far in our history, under the malignant influence of Slavery, the odious construction or intendment has prevailed.

There is also another voice to be heard in determining the meaning of a doubtful clause. It is the Preamble, which, on the threshold, proclaims the spirit in which the Constitution was framed, and furnishes a rule of interpretation. To "*establish justice*, insure domestic tranquillity, provide for the common defence, *promote the general welfare, and secure the blessings of Liberty* to ourselves and our posterity": such are the declared objects of the Constitution, which must be kept present to the mind as we read its various provisions. And every word must be so interpreted as best to uphold these objects. The Preamble would be powerless against any "positive" sanction of Slavery by unequivocal words; but, on the other hand, any attempted sanction of Slavery by words not "positive" and not unequivocal, must

[1] Coke upon Littleton, 42. b.

[2] Law of Nations, Book II. ch. 17, §§ 300, 302.

be powerless against the Preamble, which, in this respect, is in harmony with the ancient maxims of the law.

ANALYSIS OF THE WORDS OF THE FUGITIVE CLAUSE.

LOOKING more minutely at the precise words of this clause, we see how completely it is stamped with equivocation from beginning to end. *Every descriptive word it contains is double in signification.* The clause may be seen, first, in what it does not contain; and, secondly, in what it does contain. It does not contain the word "slave" or "slavery," which singly and exclusively denotes the idea of property in man. Had either of these fatal words been employed, there would have been no uncertainty or duplicity. But in abandoning these words, all idea of property in man was abandoned also. Other words were adopted, simply because they might mean something else, and therefore would not render the Constitution on its face "odious." But the unquestionable fact that these words might mean something else makes it impossible for them to mean "slave" or "slavery," unless in this behalf we set aside the most commanding rules of interpretation. It is clear that the authors of this clause attempted an impossibility. They wished to secure Slavery without plainly saying so; but such is Slavery that it cannot be secured without plainly saying so. Naturally and inevitably they failed, as if they had attempted to describe *black* by words which might mean *white*, or to authorize crime by words which naturally mean something that is not crime. The thing could not be done. The attempt to square the circle is not more absurd.

The clause begins with the descriptive words, "No *person* held to service or labor in one State under the laws thereof." Now a slave is not a "person," with the rights of persons, but a *chattel* or *thing*. Such is the received definition of the Slave States, handed down from Aristotle. He is not "held to service or labor," but he is held as property. The terms employed describe an apprentice, but not a slave. And he must be held "under the laws" of a State. Here again is the case of an apprentice, who is clearly held "under the laws" of a State. But we have the authority of Mr. Mason, recently of the Senate from Virginia, for saying that no proof can be produced that Slavery in any State "is established by *existing laws*." [1] The person thus described shall not "be *discharged* from such service or labor." Clearly an apprentice is discharged, but a slave is manumitted or emancipated. This undischarged person "shall be delivered up on *claim* of the party to whom such service or labor may be *due*." But all these words imply *contract*, or at least *debt*, as in the case of an apprentice. The slave can *owe* no "service or labor" to his master. There is nothing in their relations out of which any such obligation can spring. The whole condition stands on force and nothing else. It is robbery tempered by the lash, — not merely robbery of all the fruits of industry, but robbery of wife and child. To such terrible assumption the language of *contract* or *debt* is totally inapplicable. Nothing can be "due" from slave to master, unless it be that "resistance to tyrants" which is "obedience to God." It is absurd to say that "labor or service," in any sense, whether of justice or of law, can

[1] Congressional Globe, 31st Cong. 1st Sess., Appendix, pp. 1583, 1584, August 19, 1850.

be "due" from the slave. The same power which takes wife and child may exact this further sacrifice, but not because it is "due."

Such is the simple truth touching this much debated clause. At the touchstone of unquestioned rules of interpretation its *odious* character disappears, and astonishment prevails that the public mind for so long a period could have been perverted with regard to its true meaning. Nobody can doubt that this clause *may* be interpreted in favor of Freedom, so as to exclude all idea of property in man. But if it *may*, then such is the voice of Freedom that it *must*.

APPLICABLE TO INDENTED SERVANTS.

HERE it is important to consider, that, besides apprentices, there was a class of "indented servants" embraced by this clause. From Bancroft we learn that this species of servitude, under indentures or covenants, had from the first existed in Virginia. According to the historian, "the servant stood to his master in the relation of a *debtor*," which, be it observed, is not the condition of a slave. From the same authority we learn that "the supply of white servants became a regular business," — that, "like negroes, they were to be purchased on shipboard, as men buy horses at a fair," — that "in 1672 the average price in the Colonies, where five years of service were due, was about ten pounds, while a negro was worth twenty or twenty-five pounds." [1] The Scots captured on the field of Dunbar, royalist prisoners of the Battle of Worcester, and companions of

[1] Bancroft, History of the United States, Vol. I. p. 175.

Monmouth in his ill-starred insurrection were sent to the Colonies as a merchantable commodity, and there held in slavery for life or for years.

The other historian of our country, Hildreth, contributes to our knowledge of this class of servants. According to him, the importation of indented white persons, called "servants," or sometimes "redemptioners," in contradistinction to negroes, known as slaves, was extensively carried on as late as 1750, especially in the Middle States; and he mentions, that the Colonial enactments for keeping them in order, and especially for preventing their escape, were often very harsh and severe. They were put, for the most part, on a level with slaves, but their case in other respects was different. Except in very young persons, the term of service seldom or never exceeded seven years, and in all cases it was limited by law.[1] Even during the Revolution these indented servants appear on the stage. Many were enlisted in the army, and, yielding to the earnest request of Washington, Congress relinquished a plan already adopted of stopping a portion of their pay for the benefit of their masters.[2]

An English Colonial official, Eddis, in a letter from America, dated September 20, 1770, describes four different denominations of persons "in a state of servitude": first, the "negroes," who are the entire property of their respective owners; secondly, "convicts," transported from the mother country for a limited term; "indented servants," engaged for five years previous to leaving England; and "free-willers," supposed from their situation to possess superior advantages. These

[1] Hildreth, History of the United States, Vol. II. p. 428.
[2] Ibid., Vol. III. p. 190.

he proceeds to describe. Of the last class he says, they are received under express condition, that, on arrival in America, they are to be allowed a number of days to dispose of themselves most to their advantage, but, in fact, they are rarely permitted to set foot on shore until they have bound themselves.[1]

If, happily, at the formation of the Constitution, these servants had diminished in number, or had ceased to exist as a class, the condition was not unknown. They were persons "held to service or labor," and the provision of the Constitution was strictly applicable to them.

Rejecting the odious application involving the support of Slavery, we follow received rules and the undoubted genius of the Common Law. How anxiously judges seek to evade an obnoxious penal statute is illustrated by a curious case mentioned by Lord Campbell. It was proved that the defendant, being in a stubble-field with a pointer, fired his gun at a covey of partridges, and shot two, when the judge, disliking to enforce the Game Laws, objected that there was no evidence that the gun was loaded with shot, and advised the jury to conclude that the birds fell dead from fright.[2] But a clause for the rendition of fugitive slaves is entitled to as little respect as the Game Laws, and, when the words employed are applicable to others than slaves, they should not be applied to slaves.

[1] Letters from America, Historical and Descriptive, comprising Occurrences from 1769 to 1777, inclusive, by William Eddis, late Surveyor of the Customs, &c., at Annapolis, in Maryland, (London, 1792,) pp. 63, 64, 71, 72, 74.

[2] Lives of the Chief Justices, Vol. II. p. 515, note. See, also, Atcheson v. Everitt, Cowper, R., 382.

NO LAPSE OF TIME CAN DEFEAT AN INTERPRETATION IN FAVOR OF LIBERTY.

AGAINST this interpretation, so overpowering in reason and authority, it is no objection that thus far Slavery has prevailed. There is no statute of limitation and no prescription against the undying claims of Liberty. Rejected or neglected in one generation, they revive in another; nor can they be impaired by any desuetude. This objection was impotent to prevent Lord Mansfield from declaring that Slavery could not exist in England, although practically, under a false interpretation of the British Constitution, sustained by the professional opinions of Talbot and Yorke, and by the judgment of the latter on the bench, under the name of Lord Hardwicke, African slaves were sold in the streets of London, and advertised for sale in English papers, for a period full as long as that which has witnessed the false interpretation of our Constitution. As length of time did not prevail against a true interpretation of the British Constitution in the case of Somerset, it ought not to prevail against a true interpretation of our Constitution now.

There is no chemistry in time to transmute wrong into right. Therefore the whole question on the Constitution is still open, as on the day of its adoption. The cases of misinterpretation are of no value,—at least they cannot settle the question against Liberty. Such was the noble declaration of Charles James Fox in the British Parliament, when, in words strictly pertinent now, he said: "Wherever any usage appeared subversive of the Constitution, if it had lasted for one or for two hundred years, *it was not a precedent, but an usurpa-*

tion."[1] And such is the character of every instance in which our Constitution has been perverted to sanction Slavery.

PERVERSIONS WITH REGARD TO ORIGIN OF THE FUGITIVE CLAUSE.

A SLIGHT examination will show prevailing perversions with regard to the origin and history of this clause. Not content with imparting to it a meaning which it cannot bear, the partisans of Slavery have given to this clause an origin and history having no foundation in truth.

It is common to assert that the clause was intended to remove or counteract some difficulty which had occurred anterior to the Convention. But there is no evidence of any such difficulty. There was no complaint. Not a single voice was raised in advance to ask any such security.

It is also asserted, with peculiar confidence, that this clause, interpreted to require the rendition of fugitive slaves, constituted one of the original compromises of the Constitution, without which the Union could not have been formed. This pretension makes an asserted stipulation for the rendition of fugitive slaves one of the corner-stones of the Union. To this discreditable imputation upon the fathers of the Republic the Supreme Court seems to have lent sanction, when it declared, in the famous Prigg case, not only that "the object of this clause was to secure to the citizens of the slaveholding States the complete right and title of ownership in their

[1] Speech, December 23, 1790: Speeches in the House of Commons, Vol. IV. p. 131.

slaves *as property* in every State in the Union into which they might escape," but that "the full recognition of this right and title . . . . was so vital to the preservation of their domestic interests and institutions, that it cannot be doubted *that it constituted a fundamental article, without the adoption of which the Union could not have been formed.*"[1] Mark the way in which this extraordinary statement is ushered in, — "It cannot be doubted"! But it is doubted, and more too. Chief Justice Taney, at a later day, put forth the statement, that, during the Revolution, it was an accepted truth that colored men "had no rights which the white man was bound to respect,"[2] — and this statement was said to stand on authentic history; but it is now exploded, and the other statement must share the same fate. A careful inquiry shows that it is utterly without support in the records of the Convention, where the real compromises are revealed; nor is there a single contemporary pamphlet, speech, article, or published letter, out of which any such thing can be inferred. Surely, had this provision been of such controlling importance, it could not have escaped notice, at least, in the "Federalist," when its writers undertook to describe and group the powers of Congress "which provide for the harmony and proper intercourse among the States";[3] but the "Federalist" is entirely silent with regard to it. And yet we are gravely told "it cannot be doubted" that this provision "constituted a fundamental article, without the adoption of which the Union could not have been formed." Frequent repetition has caused the common belief that this was history, instead of fable.

[1] Prigg *v.* The Commonwealth of Pennsylvania, 16 Peters, S. C. R., 611.
[2] Dred Scott *v.* Sandford, 19 Howard, S. C. R., 407.
[3] No. XLII.

The actual compromises of the Constitution are well known. They were three in number. One established the equality of all the States in the Union, by securing equal representation in the Senate for the small States and large States. Another allowed representatives to the Slave States according to the whole number of free persons and "three fifths of all other persons," in consideration that direct taxes should be apportioned in the same way. Another was the toleration of the slave-trade for twenty years, in consideration of commercial concessions to the "Eastern members." Such are the actual compromises of the Constitution, with regard to which there is evidence. But imagination or falsehood is the only authority for adding the rendition of fugitive slaves to this list.

TRUE ORIGIN OF THE FUGITIVE CLAUSE.

THE debates of the Convention attest the little contemporary interest in this clause. In all the general propositions or plans successively brought forward, from the meeting on the 25th of May, 1787, there was no allusion to fugitive slaves; nor was there any allusion to them, even in debate, till as late as the 28th of August, when, as the Convention was drawing to a close, they were incidentally mentioned in a discussion on another subject. The question was on the article providing for the privileges of citizens in different States. Here is the authentic report by Mr. Madison of what was said.

"General [Charles Cotesworth] Pinckney was not satisfied with it. *He seemed to wish some provision should be included in favor of property in slaves.*"[1]

[1] Debates in the Federal Convention: Madison Papers, p. 1447.

But he made no proposition. Mark the modesty of the suggestion. Here was no offer of compromise, — not even a complaint, much less a suggestion of corner-stone. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly, but without any offer of compromise, to require "fugitive slaves and servants to be delivered up like criminals." But the very boldness of the proposition drew attention and aroused opposition. Mr. Wilson, of Pennsylvania, afterwards the eminent judge and lecturer on Law, promptly remarked: "This would oblige the executive of the State to do it, *at the public expense.*" Mr. Sherman, of Connecticut, followed in apt words, saying that he "saw no more propriety in the public seizing and surrendering a slave or servant than a horse." Under this proper pressure the offensive proposition was withdrawn. The article for the surrender of criminals was then adopted. On the next day, August 29th, Mr. Butler showed that the lovers of Liberty had not spoken in vain. Abandoning the idea of any proposition openly requiring the surrender of fugitive slaves, he moved an *equivocal* clause, substantially like that now found in the Constitution, which, without debate or opposition of any kind, was unanimously adopted, — or, according to the report of Mr. Madison, *nem. con.*[1] What could not be done directly was attempted indirectly; and the partisans of Slavery contented themselves, according to the teachings of old Polonius, with language which only "by indirections finds directions out." But no "indirection" can find Slavery out. The language which sanctions such a wrong must be "di-

[1] Debates in the Federal Convention: Madison Papers, pp. 1447, 1448, 1456.

rect." Therefore, at the moment of seeming triumph, the partisans of Slavery failed.

Such is the indubitable origin of a clause latterly declared a compromise of the Constitution and a corner-stone of the Republic. That a clause for the hunting of slaves was recognized at the time as compromise or corner-stone is an absurdity disowned alike by history and by reason. That the clause was adopted, *nem. con.*, with the idea, that, *according to any received rules of interpretation*, it could authorize the hunting of slaves, it is difficult to believe. The very statement that it was adopted *nem. con.* shows that it must have been regarded, *according to received rules of interpretation*, as having no "positive" character; for there were eminent members of the Convention whose declared opinions must have prevented them from consenting to any such proposition, if it were supposed for a moment to turn the Republic which they were then organizing into a mighty Slave-Hunter. There sat Gouverneur Morris, who only a short time before exclaimed in the Convention: "*He never would concur in upholding domestic Slavery.* It was a nefarious institution. It was the curse of Heaven on the States where it prevailed."[1] There sat Oliver Ellsworth, afterwards Chief Justice, who said, in words which strike at all support of Slavery by the National Government: "The morality or wisdom of Slavery are considerations belonging to the States themselves."[2] There sat Elbridge Gerry, afterwards Vice-President, who openly declared that "we had nothing to do with the conduct of the States as to slaves, *but*

[1] Debates in the Federal Convention, August 8, 1787: Madison Papers, p. 1263.

[2] Ibid., August 21, p. 1389.

ought to be careful not to give any sanction to it."[1] There sat Roger Sherman, who avowed that he was "opposed to a tax on slaves imported, as making the matter worse, *because it implied they were property.*"[2] And, greatest of all, there sat Benjamin Franklin, who, by character and conviction, in every fibre of his moral and intellectual being, was pledged against any sanction of Slavery. Who can suppose that these wise and illustrious patriarchs of Liberty all consented, *nem. con.*, not only to sanction Slavery and to recognize property in man, but to put a kennel of bloodhounds into the Constitution, ready to hunt the flying bondman? They did no such thing; or, if it is insisted, *contrary to received rules of interpretation*, that such must be the signification of their language, clearly they did not understand it so. Doubtless there were members of the Convention who, in passion for Slavery, cheered themselves with the delusion that they had adequately described, in "positive" terms, the pretension they hoped to embody in the Constitution; but the *legal meaning* of this provision must be determined, not by the passion of such members, but by the actual language employed, according to received rules of interpretation, from which there is no appeal. Other rules may be set aside as inapplicable; but the rule, which, in presence of any doubtful phrase, any indirect language, or any word capable of a double sense, requires that the interpretation shall be *in favor of Liberty*, is the most commanding of all.

Thus, when this clause took its place in the Constitu-

[1] Debates in the Federal Convention, August 22, 1787: Madison Papers, p. 1394.

[2] Ibid., p. 1396.

tion, *nem. con.*, it was clearly a cipher. It meant nothing, or at least nothing "odious." This conclusion becomes still more apparent in the light of two special incidents, which cannot be forgotten in determining the validity of any claim for Slavery under equivocal words. The first is the saying of Mr. Madison, which he has recorded in the report of the Convention, that it was "wrong to admit in the Constitution the idea that there could be property in men."[1] Admirable words, constituting a binding rule of interpretation. And yet, in the face of this declaration, it is insisted that the "idea that there could be property in men" is embodied in the double-faced words of the fugitive clause. But as the words are susceptible of two meanings, clearly they should be interpreted so as to exclude what is "wrong." The other incident furnishes the same lesson in a manner more pointed still. It appears that on the 13th of September, 1787, a fortnight after the fugitive clause was adopted in its earliest form, and while the Convention was considering the report of its committee on style and arrangement, "On motion of Mr. Randolph, the word '*servitude*' was struck out and '*service*' unanimously inserted, the former being thought to express the condition of slaves, *and the latter the obligations of free persons.*"[2] Thus the word "service" ceases even to be equivocal, for it was unanimously adopted as expressing "the obligations of free persons." And such it would have continued to express always, if Slavery had not unhappily triumphed over the National Government in all departments, executive, legislative, and judicial.

[1] Debates in the Federal Convention, August 25, 1787: Madison Papers, pp. 1429, 1430.

[2] Ibid., p. 1569.

It is not doubted that at home in the Slave States the fugitive clause was interpreted as embracing slaves, and that this asserted license was at times mentioned as a reason for the adoption of the Constitution. Even Mr. Madison, who had declared in the National Convention that it was "wrong to admit in the Constitution the idea that there could be property in men," argued afterwards, in the Virginia Convention, that "this clause was expressly inserted to enable owners of slaves to reclaim them,"[1] — all of which was doubtless true, but the question still occurs as to the constitutional efficacy of the clause. Mr. Iredell, who was not a member of the National Convention, undertook, in the North Carolina Convention, to explain what it had done. Announcing that the clause was intended to include slaves, he added: "The Northern delegates, *owing to their particular scruples* on the subject of Slavery, did not choose the word *slave* to be mentioned,"[2] — so that, on the very statement of this expositor, the question naturally arose whether slaves were really included. In the South Carolina Convention, General Pinckney, who in the National Convention first started the idea of "some provision in favor of property in slaves," boasted that this had been obtained; but he added, in suggestive words, "We have made the best terms for the security of this species of property it was in our power to make. *We would have made better, if we could.*"[3] True enough. The Slave-Masters got all they could: if possible, they would have got more. But the question still recurs, whether in this equivocal provision they got anything. In the National Conven-

[1] Elliot's Debates (2d edit.), Vol. III. p. 453.
[2] Ibid., Vol. IV. p. 176.
[3] Ibid., p. 286

tion they adopted a clause which was only another illustration of "Mr. Facing-both-ways." At home, in their local conventions, they courageously insisted that it faced only one way. Without dwelling on old sayings about "a villain outwitting himself," and wit failing when "upon an ill employ," clearly the wit of the Slave-Masters was "upon an ill employ" when it sought to foist Slavery into the text of the Constitution; and it is easy to see that all who engaged in the work were like "a villain outwitting himself." Whatever they may have thought or boasted, the thing was not done.

From the origin of the fugitive clause, and the circumstances attending its adoption, it is apparent that it has been the occasion of infinite exaggeration and misrepresentation. Like a Pagan idol, it has been worshipped and covered with gifts; but the prevailing superstition which sustained the imposture has at last disappeared, and we see nothing but a vulgar image of painted wood.

LEGISLATION FOR RENDITION OF FUGITIVE SLAVES.

From the clause in the Constitution, the Committee pass to a consideration of the legislation founded upon it. Of course, if the clause is misunderstood, no legislation can derive any validity from it. *Nothing can come out of nothing;* and since there is nothing in the Constitution positively requiring rendition of fugitive slaves by the National Government, there can be no authority for any legislation by Congress on the subject. Therefore the argument against the existing statutes is complete. But, since it is proposed to reverse an early policy of the Government, the Committee are

unwilling to stop here. These statutes must be considered in their history and character.

As early as 1793, while Congress was sitting in Philadelphia, provisions for the surrender of fugitive slaves were fastened upon a bill for the surrender of fugitives from justice, and the whole was adopted, apparently with little consideration. Thus, accidentally, Congress assumed the *odious* power to organize slave-hunting. But the Act was scarcely passed, before the conscience of people, not only at the North, but even in Maryland, began to be aroused. Granville Sharp, who in England so bravely maintained the national cause as well as the cause of the slave, addressed a letter to the "Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and others unlawfully held in Bondage," where he set forth elaborately those binding rules of interpretation, which, according to English law, require a court to incline always in favor of Liberty. This letter purports to have been published, as a pamphlet, by order of the Society, and to have been printed at "Baltimore, in Calvert Street, near the Court-House, by D. Graham, L. Yundt, and W. Patton," in 1793. In a brief preface, the Maryland Society thus reveals the trials attending the new Fugitive Slave Act: —

"Still Slavery exists, and, *in the case of slaves escaping from their masters*, the friends of Universal Liberty are often embarrassed in their conduct by a conflict between their principles and *the obligations imposed by unwise and perhaps unconstitutional laws.*"

Such is a contemporary record of sensibilities in a Slave State; and let it be mentioned to the honor of Maryland. But it is reasonable to suppose that sensi-

bilities in States further north were touched still more. Mr. Quincy, whose living memory embraces this early period, reports, that, when an enforcement of this Act was attempted in Boston, the crowd thronging the room of the magistrate quietly and spontaneously opened a lane for the fugitive, who was thus enabled to save himself from Slavery, and also save the country from the dishonor of such a sacrifice. Almost at the same time, in patriotic Vermont, a judge of the Supreme Court of the State, on application for the surrender of an alleged slave, accompanied by documentary evidence, refused to comply, *unless the master could show a bill of sale from the Almighty.* Such was the popular feeling which this earlier legislation encountered.

There is authentic evidence that this popular feeling was recognized by President Washington as a proper guide, where he was personally interested. A slave of Mrs. Washington had escaped to New Hampshire. The President, in an autograph letter, which has been produced in the Senate,[1] addressed to Mr. Whipple, the collector at Portsmouth, and dated at Philadelphia, November 28, 1796, after expressing the desire of "her mistress" for the return of the slave, lays down the following rule of conduct:—

"I do not mean, however, by this request, that *such violent measures* should be used *as would excite* a mob or riot, which might be the case, if she has adherents, *or even uneasy sensations in the minds of well-disposed citizens.* Rather than either of these should happen, I would forego her services altogether,—and the example, also, which is of infinite more importance."

The fugitive never was returned, but survived to a good

[1] See, *ante*, Vol. III. p. 178.

old age, down to a recent period,—a living witness to that public opinion which made even the mildest of Fugitive Slave Acts a dead letter.

At last, in 1850, after the subject of Slavery had been agitated in Congress without interruption for nearly twenty years, a series of propositions was adopted, and solemnly declared to be *compromises*, by which all the questions concerning Slavery were permanently settled, so as never again to vex the country, — as if any question could be permanently settled except on principles of justice. But the "gruel" was made, and among its ingredients "for a charm of powerful trouble" was a new Fugitive Slave Act, first reported from the Committee on the Judiciary by Mr. Butler, of South Carolina, but afterwards amended by a substitute from Mr. Mason, of Virginia, so as to become substantially his measure. It is needless to mention its details. Suffice it to say, that in these, as in general conception, it was harsh, cruel, and vindictive. Few statutes in history have been so utterly inhuman, not excepting even those British statutes for the oppression of the Irish Catholics, which are pictured by Edmund Burke in words strictly applicable to the monstrosity of our country: —

"That truly barbarous system, where almost all the parts were outrages on the rights of humanity and the laws of Nature," — "a machine of wise and elaborate contrivance, and as well fitted for the oppression, impoverishment, and degradation of a people, and the debasement in them of human nature itself, as ever proceeded from the perverted ingenuity of man."[1]

[1] Letter to a Peer of Ireland on the Penal Laws against Irish Catholics; and Letter to Sir Hercules Langrishe on the Subject of the Roman Catholics of Ireland: Works (London, 1801), Vol. VI. pp. 292, 375.

Such, unquestionably, was the Fugitive Slave Act of 1850, which is still allowed to remain on the statute-book, a blot upon our country and age.

Where a measure is so plainly repugnant to reason and authority, and on its face has so little foundation in the Constitution, any elaborate argument seems superfluous, especially at this moment, when Slavery everywhere is yielding to Freedom. The general conscience condemns the inhuman statute, and this is enough.

But it is important to show how the country has been deceived. Therefore, briefly, the Committee call attention to the constitutional objections.

UNCONSTITUTIONAL USURPATION OF POWER BY CONGRESS.

FORGETTING, then, for the moment, the Preamble of the Constitution, which speaks always for Justice and Liberty, — forgetting, also, the venerable maxim of the law, that "we must incline always in favor of Freedom," and likewise that other maxim, that "he is impious and cruel who does not favor Freedom," — refusing, according to the requirement of law, "to catch at anything in favor of Liberty," and, in spite of all received rules of interpretation, assuming that the words of the fugitive clause adequately define fugitive slaves, — the question then arises, if this clause, thus defiantly interpreted, confers any power upon Congress.

Clearly not.

Search the Constitution, and you will find no grant, general or special, conferring upon Congress power to legislate with regard to fugitives from service or labor. In the general catalogue of powers this is not mentioned;

nor does it appear in any special grant. There is nothing in the clause itself, there is nothing in any other clause, applicable to this pretended power. The whole subject is left to stand on a clause which, whatever its meaning otherwise, plainly on its face is only a *compact*, and not a grant of power. And in this respect it differs on its face from other provisions of the Constitution. For instance, Congress is expressly empowered "*to establish an uniform rule* of naturalization, and *uniform laws* on the subject of bankruptcies, *throughout the United States.*" Without this grant, these two important subjects would have fallen within the control of the States, the nation having no power *to establish a uniform rule* thereupon. Now, instead of the existing compact on fugitives from service or labor, it would have been easy, had any such desire prevailed, to add this case to the provision on naturalization and bankruptcy, and empowered Congress *to establish a uniform rule for the surrender of fugitives from service or labor throughout the United States.* Then would Congress have had unquestionable jurisdiction. But nobody in the Convention, not one of the hardiest partisans of Slavery, presumed to make this proposition. Had it been made, it is easy to see that it must have been most unceremoniously dismissed.

The genius of the Common Law, to which our ancestors were devoted, cried out against any such concession. If we refer to its great master, Lord Coke, from whose teachings in that day there was no appeal, we find its living voice. In the Third Institute he thus expresses himself: "It is holden, and so it hath been resolved, *that divided kingdoms, under several kings in league one with another, are sanctuaries for servants* or

subjects flying for safety from one kingdom to another, and, upon demand made by them, are not, *by the laws and liberties of kingdoms,* to be delivered."[1] Unquestionably, if such "sanctuaries" may be overturned, it can be only in a manner consistent with "laws and liberties" of the States where the fugitive is found, and not through the exercise of a domineering prerogative by Congress.

Whatever the real meaning of the clause in other respects, plainly it is a *compact,* with a *prohibition* on the States, *conferring no power on the nation.* In natural signification it is a compact. According to examples of other countries and principles of jurisprudence, it is a compact. All arrangements for surrender of fugitives are customarily compacts. Except under express obligations of treaty, no nation is bound to surrender fugitives. Especially has this been the case with fugitives for Freedom. Bodin asserted the freedom of all foreign slaves just so soon as they crossed into France.[2] In mediæval Europe cities set up the same immunity, even against claimants under the same national government. In 1531, while the Netherlands and Spain were united under Charles the Fifth, the supreme council of Mechlin rejected an application from Spain for the surrender of a fugitive slave. By express compact alone could this be secured. But the provision of the Constitution was borrowed from the Ordinance of the Northwestern Territory, which is expressly declared to be a "compact,"[3] and this Ordinance, finally drawn by Nathan Dane, of Massachusetts, was again borrowed, in some of its distinct-

[1] Third Part of the Institutes of the Laws of England, p. 180.

[2] "Servi peregrini, ut primum Galliæ fines penetraverunt, eodem momento liberi fiunt." — *De Republica,* Lib. I. cap. 5, p. 41 C.

[3] Preamble to Articles of Ordinance.

ive features, from the early institutions of Massachusetts, among which, as far back as 1643, was a compact of like nature with other New England States. Thus this provision is a compact in language, a compact in nature, and a compact in its whole history; as we have already seen, it is a compact according to the intentions of our fathers and the genius of our institutions.

There are two instances in history of compacts which illustrate the present words. The first is found in a treaty of peace between Leo the Sixth, Greek Emperor of Constantinople, and Oleg, Regent of Russia, in the year of the Christian era 906, as follows: —

"If a Russian slave take flight, or even if he is carried away under pretence of having been bought, his master can pursue him and take him wherever he shall find him, and any man who shall oppose him in his search *shall be deemed guilty.*" [1]

This compact, made in the unequivocal language of a barbarous age, has long since ceased to exist; and now, in our own day, Russia disdains to own a slave.

The other instance is the compact between the New England colonies in 1643, being one of the "Articles of Confederation between the Plantations under the Government of the Massachusetts, the Plantations under the Government of New Plymouth, the Plantations under the Government of Connecticut and the Government of New Haven, with the Plantations in combination therewith." Here it is: —

"*It is also agreed*, That, if any servant run away from his master into any other of these confederated jurisdictions,

[1] Karamsin, Histoire de l'Empire de Russie, traduite par MM. St.-Thomas et Jauffret, Tom. I. p. 172.

that in such case, upon the certificate of one magistrate in the jurisdiction out of which the said servant fled, or upon other due proof, the said servant *shall be delivered* either to his master or any other that pursues and brings such certificate or proof." [1]

Here, by words of *agreement*, less frank and unequivocal than those of the earlier time, fugitives are restored. But this compact, like its Russian prototype, long since ceased to exist.

Unquestionably the fugitive clause of the Constitution, whether applicable to fugitive slaves or not, was never intended to confer power upon Congress, but was simply a *compact*, to receive such interpretation as the States where it was enforced might choose to adopt.

AUTHORITIES AGAINST THE POWER OF CONGRESS.

THE Committee do not leave this conclusion to rest merely on unanswerable reason. Authorities add to the testimony.

Here is the judgment of Chancellor Walworth, of New York, pronounced in 1835, before this subject had become the occasion of political strife. The testimony of the learned Chancellor is the more important, when it is considered that he has always acted politically with the Democracy, which has been the support of Slavery.

"I have looked in vain among the powers delegated to Congress by the Constitution for any general authority to that body to legislate on this subject. It certainly is not contained in any express grant of power, and it does not

[1] Art. VIII. [VII.]: Records of the Colony of New Plymouth, Vol. IX. pp. 6, 7. See, also, Charters and General Laws of the Colony and Province of Massachusetts Bay, p. 724.

appear to be embraced in the general grant of incidental powers contained in the last clause of the Constitution relative to the powers of Congress. The law of the United States respecting fugitives from justice and fugitive slaves is not a law to carry into effect any of the powers expressly granted to Congress, 'or any other power vested by the Constitution in the Government of the United States, or any department or officer thereof.'"[1]

Here, also, is the judgment of Chief Justice Hornblower, of New Jersey, pronounced in 1836. Having shown that the clause in question confers no power on Congress, he proceeds as follows.

"In short, if the power of legislation upon this subject is not given to Congress in the second section of the fourth article of the Constitution, it cannot, I think, be found in that instrument. The last clause of the eighth section of the first article gives to Congress a right to make all laws which shall be necessary and proper for carrying into execution *all the powers* vested by the Constitution in the Government of the United States, or in any department or officer thereof. But the provisions of the second section of the fourth article of the Constitution cover no grant to, confide no trust, and vest *no powers* in, the Government of the United States. The language of the whole of that section is to establish certain principles and rules of action by which the contracting parties are to be governed in certain specified cases. The stipulations respecting the rights of citizenship, and the delivery of persons fleeing from justice or escaping from bondage, *are not grants of power* to the General Government, to be executed by it in derogation of State authority, but they are in the nature of treaty stipulations, resting for their fulfilment upon the enlightened patriotism and good faith of the several States. The argument in favor of Con-

[1] Jack *v.* Martin, 14 Wendell, R., 525, 526.

gressional legislation, founded on the suggestion that some of the States might refuse a compliance with these constitutional provisions, or neglect to pass any laws to carry them into effect, *is entitled to no weight.*" [1]

Afterwards, in a published letter of 1852, the Chief Justice says: —

"Be assured, my dear Sir, my judgment, whatever it may be worth, has been for years, and now is, in perfect accordance with yours in relation to the unconstitutionality of the Fugitive Slave Laws of 1793 and 1850." [2]

Other judicial opinions might be adduced; but, as they have been pronounced since controversy on this question, they would be less regarded.

There are opinions, pronounced in the Senate, which, from the characters of their authors, are entitled to peculiar consideration.

It will be remembered that Mr. Webster gave his support to the Fugitive Slave Act of 1850; but, whatever may have been his vote, so far as his personal authority could go, *he condemned the Act as unconstitutional.* Here is his opinion, in the famous speech of the 7th March, 1850.

"I have always thought that the Constitution addressed itself to the Legislatures of the States, or to the States themselves. It says that those persons escaping to other States 'shall be delivered up,' and I confess I have always been of the opinion that it was an injunction upon the States themselves. When it is said that a person escaping into another State, and coming, therefore, within the juris-

[1] Opinion of Chief Justice Hornblower on the Fugitive Slave Law: The State *v.* The Sheriff of Burlington, in *Habeas Corpus*, New Jersey Superior Court, February Term, 1836, p. 5.

[2] Ibid., p. 7.

diction of that State, shall be delivered up, *it seems to me the import of the clause is, that the State itself, in obedience to the Constitution, shall cause him to be delivered up. That is my judgment. I have always entertained that opinion, and I entertain it now.*" [1]

"I have always entertained that opinion, and I entertain it now." Such are the emphatic words by which Mr. Webster declares his judgment of the unconstitutionality of this Act.

He was not alone. Mr. Mason, the actual author of the Act of Congress, exposed its unconstitutionality in the very speech by which he introduced it.

"In my reading of these clauses of the Constitution for extradition of fugitives of both classes, *I advance the confident opinion* that it devolves upon the States the duty of providing by law both for their capture and delivery. . . . . I say, then, Sir, that the true intent of the Constitution was to devolve it upon the States, as a federal duty, to enforce, by their own laws, within their respective limits, both these clauses of extradition." [2]

And Mr. Butler, of South Carolina, at a later day, said: —

"Under the Constitution, each State of itself ought to provide for the rendition of all fugitives from labor to their masters. *This was certainly the design of the Constitution.*" [3]

Such are some of the authorities, judicial and political, by which Congressional power over this subject is denied. And yet, in the face of all authority, and in defiance of reason, Congress assumed this power. It was

[1] Works, Vol. V. p. 354.

[2] Congressional Globe, 31st Cong. 1st Sess., pp. 234, 235, January 28, 1850.

[3] New York Daily Times, June 27, 1854. Congressional Globe, 33d Cong. 1st Sess, p. 1516.

done at the demand of Slavery, and for the protection of Slavery. Of course, such an assumption of undelegated power was a usurpation at the time, and is a usurpation still, — doubly hateful, when it is considered that it is a usurpation in the name of Slavery. It is hard to think that Congress was driven to unconstitutional assumption in such a cause, and that, contrary to sovereign rules of interpretation, it leaned to Slavery rather than to Freedom. But the time has come at last when it may recover the attitude belonging to it under the Constitution.

In advising the repeal of the Fugitive Slave Act, it is enough to show that it is founded on usurpation by Congress of power not granted by the Constitution. But, even admitting the power, a slight examination will show that it has been executed in defiance of the Constitution.

The constitutional objections to the Fugitive Slave Act are abundant. It is not too much to say, that in every section and at every point it is repugnant to admitted principles of Constitutional Law.

UNCONSTITUTIONAL DENIAL OF TRIAL BY JURY.

FOREMOST among these objections it is proper to put the denial of trial by jury to the fugitive whose liberty is in question. It is well known that Judge Story, who pronounced the opinion of the Supreme Court affirming the constitutionality of the early Fugitive Slave Act, declared that the necessity of a trial by jury had not been argued before the Court, and that in his opinion this was still "an open question."[1] It has never been

[1] Story's Life and Letters, Vol. II. p. 396.

argued since; but it is difficult to say that it is still "an open question." The battles of Freedom are never lost, and the longer this right is denied the more its justice has become apparent, until at last it shines resplendent beyond all contradiction. Even if there were doubt of the obligation of Congress, there can be no doubt of the power. Nobody denies that Congress, if it legislates on this matter, *may* allow trial by jury. But here again, if it *may*, so overwhelming is the claim of justice, it MUST.

The text of the Constitution leaves the case beyond question. And here, on the threshold, two necessary incidents of the delivery are observed: first, it must be made in the State where the fugitive is found; and, secondly, it restores to the claimant complete control over the person, so that the victim may be conveyed to any part of the country where it is possible to hold a slave, or he may be sold on the way. The proceedings, therefore, cannot be regarded, in any just sense, as preliminary or auxiliary to some future formal trial, as in the case of a fugitive from justice, but as complete in themselves, final and conclusive.

It is because of the contempt with which, under the teachings of Slavery, to the shame of our country, men have thus far regarded the rights of colored persons, that courts have been willing for a moment to recognize the constitutional right to hurl a human being into bondage without trial by jury. Had the victims been white, it is easy to see that the rule would have been different. But it is obvious, that, under the Constitution, the rule must be the same for all, whether black or white.

On the one side is a question of property; on the

other side is the vital question of Human Freedom in its most transcendent form, — not merely Freedom for a day or a year, but for life, and the freedom of generations that shall succeed so long as Slavery endures. Whether viewed as a question of property or a question of Human Freedom, the requirement of the Constitution is equally explicit, and it becomes more explicit as we examine its history. It is well known, that, at the close of the National Convention, Elbridge Gerry refused to sign the Constitution, because, among other things, it sanctioned the establishment of "a tribunal *without juries*, — a Star-Chamber as to civil cases."[1] Many united in this opposition, and on the recommendation of the First Congress an additional safeguard was added in the following words: "In *suits at Common Law*, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved.*" Words cannot be more positive.

Three conditions, according to this Amendment, are necessary. *First*, there must be "a suit." But the Supreme Court, in the case of *Cohens* v. *Virginia*, have defined a suit to be "the prosecution, or pursuit, of some *claim*, demand, or request,"[2] — thus affirming that the "claim" for a fugitive is "a suit." *Secondly*, there must be a suit "at Common Law." But here again the Supreme Court, in the case of *Parsons* v. *Bedford*, while considering this very clause, has declared that "in a just sense the Amendment may well be construed to embrace all suits which are not of Equity and Admiralty jurisdiction, *whatever may be the peculiar form which they*

[1] Debates in the Federal Convention, September 15, 1787: Madison Papers, Vol. III. p. 1595.

[2] 6 Wheaton, R., 407.

may assume to settle legal rights";[1] and clearly, since the claim for a fugitive is not a suit in Equity or Admiralty, but a suit to settle what are called "legal rights," it must, of course, be "a suit at Common Law." *Thirdly*, the value in controversy must "exceed twenty dollars." But here again the Supreme Court, in the case of *Lee* v. *Lee*, on a question as to jurisdiction, founded on "the value in controversy," has declared that the freedom of the petitioners, which was the matter in dispute, was "not susceptible of a pecuniary valuation,"[2] — showing, that, since Liberty is above price, the claim to a fugitive always necessarily presumes that "the value in controversy exceeds twenty dollars."

Thus, by a series of separate decisions of the Supreme Court on the three points involved in the interpretation of this clause, it is clear beyond question that the claim to a fugitive is, first, "a suit," — secondly, "at Common Law," — thirdly, "where the value in controversy exceeds twenty dollars": so that trial by jury is expressly secured.

Even if the Supreme Court had been silent on this question, the argument from the old books of the Common Law would be unanswerable. We are told that there is nothing new under the sun. Certainly, long before our Constitution, the claim for a fugitive slave was known to the Common Law. In early history, and down even to a late period, the slave in England was generally called *villein*, though in the original Latin judicial forms *nativus*, implying slavery by birth. Of course, then as now, he sometimes ventured to *escape* from his master; but the Common Law supplied the appropriate remedy. The claim was prosecuted by "a

[1] 8 Peters, S. C. R., 447. [2] 8 Ibid., 48.

suit at Common Law," to which, as to every suit at Common Law, the trial by jury was necessarily attached. Blackstone, in his Commentaries, in words which must have been known to all the lawyers of the Convention, said of *villeins:* "They could not leave their lord without his permission, but, *if they ran away,* or were purloined from him, *might be claimed and recovered by action, like beasts or other chattels.*"[1] But this word "action" of itself implies "a suit at Common Law," with trial by jury.

The forms of proceeding in such cases are carefully preserved in those books which constitute the authoritative precedents of the Common Law. There are writs, counts, pleadings, and judgments, all ending in trial by jury. They will be found in Fitzherbert's "Natura Brevium."[2] The Year Books and Books of Entries are full of them. Clearly and indisputably, in England, where the Common Law has its origin, a claim for a fugitive slave was "a suit at Common Law," recognized as such among its old and settled proceedings, as much as a writ of replevin for a horse or a writ of right for land. It follows, then, that the requirement of the Constitution, read in the illumination of the Common Law, naturally and necessarily embraces proceedings for the recovery of fugitive slaves, *so far as any such are instituted or allowed under the Constitution.*

And this irresistible conclusion had the support of a Senator from South Carolina in an earlier period of our history, before passion had obscured reason and conspiracy against the Union had blotted out all loyalty to truth. In reply to a proposition, in 1818, to refer the claim of the master to a judge without a jury, Mr. Smith,

[1] Vol. II. p. 93. [2] Pp. 77 - 79.

speaking solely in the interests of property, thus expressed himself: —

"This would give a judge the sole power of deciding *the right of property the master claims in his slave, instead of trying that right by a jury, as prescribed by the Constitution.* He would be judge of matters of law and matters of fact, — clothed with all the powers of a jury, as well as the powers of a court. Such a principle is unknown in your system of jurisprudence. *Your Constitution has forbid it.* It preserves the right of trial by jury in all cases where the value in controversy exceeds twenty dollars."[1]

Thus, in those days, a partisan of Slavery, while asserting its divine origin, and vindicating the rendition of fugitive slaves, recognized the claim of the master as "a suit at Common Law," to be tried by a jury; and this he *insisted* was prescribed by the Constitution. But if this Senator could claim trial by jury for the protection of his pretended property, with much greater reason might the fugitive claim trial by jury for the protection of his liberty. Surely, now, when Liberty is regaining her lost foothold, this protection will not be denied.

OBJECTIONS TO TRIAL BY JURY.

To this array of reason and authority there are but two attempts at reply, so far as the Committee is informed.

(1.) The first asserts that the rendition of the slave under the Act of Congress is a "preliminary" proceeding, in the nature of *extradition*, which does not establish any right between the parties, but simply hands

[1] Annals of Congress, 15th Cong. 1st Sess., col. 232, March 6, 1818.

the slave over to the local jurisdiction from which he escaped, and therefore trial by jury is unnecessary. But this pretension is founded on a plain misapprehension. It forgets, in the first place, that by ancient authority a "claim" for a fugitive slave is unquestionably a "suit at Common Law," to be determined by a jury *before the judgment of rendition.* And it forgets, in the second place, that the proceedings are in no respect "preliminary"; that they do not contemplate any other trial between the parties, but that they fix absolutely the relations of the parties, making one of them master and the other slave; that the certificate of rendition is absolute and unimpeachable by any human tribunal, so that the claimant, from the moment of its issue, may assert unqualified ownership over the fugitive; that, under this certificate, he may proceed at once to demand service and labor, and enforce his demand by the lash; and that, instead of returning the victim to that local jurisdiction from which he is alleged to have escaped, the claimant may hurry him, chained and manacled, to some distant plantation, where the only judge will be an overseer, and the only jury the creatures who aid in enforcing a terrible power. And the argument forgets, also, that this cruel judgment may be inflicted upon a freeman, who, perhaps, has never left his Northern home, but whose fate will be fixed beyond appeal by the mere certificate of a commissioner. Surely this simple statement is enough.

The very word "preliminary" suggests the inquiry, To what? *Preliminary* is not an adjective that supports itself. It requires an adjunct, or an abutment on which to rest. It is the beginning or introduction to some further proceeding. It is something incomplete or un-

finished. If it be judicial, it contemplates necessarily some further judicial proceeding. The judge who pronounces a preliminary judgment must necessarily have in mind the judgment to follow, and must recognize his relation to it. But if there is no judgment to follow, if there is no contemplation of any further judicial proceeding, if the actual proceeding is complete and finished, if it is not the beginning or introduction to any further proceeding, if there is nothing on which the adjective "preliminary" can rest, it is absurd to call the proceeding by this name. Such proceeding is essentially final, and this is the unquestionable character of that under the Fugitive Slave Act. To call it "preliminary," and on this ground set up apology for denial of trial by jury, is only another illustration of devices employed by Slavery to baffle the demands of Freedom.

But it is still said that there may be another trial in the State whither the slave is conveyed. On this assumption it has been well remarked, that, if, contrary to general principles of law attaching to the decision of a competent tribunal a conclusive force as to the same right between the same parties, there could be any trial in the Slave State, then it is *another trial*, and in no respect a continuation and completion of the proceedings before the commissioner. The only trial possible would be an original suit by the alleged slave against his *actual* master, whosoever he might be; for the claimant may have already sold him to another. But there can be no legal connection between the two proceedings. Each is original, and must be decided on its own merits. In the one case, the *actual* claimant, whosoever he may be, is plaintiff, and the slave is defendant; and in the other case the slave is plaintiff, and the *actual* master,

whosoever he may be, is defendant. And the first proceeding is preliminary to the other only as an illegal imprisonment is preliminary to a suit for damages. The whole pretension is lost in its absurdity.

(2.) The second attempt at reply to the argument for trial by jury may be given in the words of the author of the Fugitive Slave Act himself. In the debate which occurred on its passage, Mr. Mason thus expressed himself: —

"If you pass a law which shall require a trial by jury, not one man in twenty whose slave escapes will incur the risks or expense of going after the fugitive. It proposes a trial according to all the forms of the court. *A trial by jury necessarily carries with it a trial of the whole right*, and a trial of the right to service will be gone into according to all the forms of the court in determining upon any other fact. . . . . This involves the detention of the fugitive in the mean time, — a detention that is purely informal; and whether the jury should or should not render a righteous verdict in the end is a matter I will not inquire into, for it is perfectly immaterial, *as the delay itself would effectually defeat the right of reclamation.*" [1]

Thus, in a question of Human Freedom, the delay incident to trial by jury was unblushingly asserted as a sufficient reason for denial of the right. On a pretension so repulsive, it is enough to say that its feebleness is exceeded only by its audacity.

The Committee, therefore, put aside the attempts at reply, and confidently rest in the conclusion that the denial of trial by jury to a person claimed as slave is an unquestionable violation of the Constitution.

[1] Congressional Globe, 31st Cong. 1st Sess., Appendix, p. 1584, August 19, 1850.

UNCONSTITUTIONAL DELEGATION OF JUDICIAL POWER TO COMMISSIONERS WHO ARE NOT JUDGES.

THERE is still another objection from unconstitutionality, which may be treated more briefly; but it is not less decisive than the two objections already considered. It is founded on the character of the magistrate to whom is committed the adjudication of the great question of Human Freedom, than which none greater is known to the law.

If it were a question merely of property above twenty dollars, — if it were a question of crime, involving imprisonment under the laws of the United States, — especially if it were a question involving life, — the trial must be before a judge duly appointed by the President by and with the advice and consent of the Senate, holding office during good behavior, receiving for his services a fixed compensation, and bound by solemn oath of office. But this great question of Human Freedom is committed to the unaided judgment of a petty magistrate, called a commissioner, appointed by the Court instead of the President, holding his office during the will of the Court instead of during good behavior, paid by fees according to each individual case, instead of receiving for his services a fixed compensation, and not bound by any oath of office.

A claim for the rendition of a fugitive from service or labor, constituting as it does "a suit at Common Law," and also "a case arising under the Constitution," must be determined by a *judicial tribunal*. But a commissioner is not a judicial tribunal, nor is he in any sense a judge; so that he is not entitled, under

the Constitution, to exercise this extraordinary jurisdiction.

As "a suit at Common Law," the claim must be tried by the tribunal which has jurisdiction of such suits. But a commissioner can have no such jurisdiction.

As "a case arising under the Constitution," it falls under the judicial power of the United States. But a commissioner is no part of this power.

Two provisions of the Constitution place this conclusion beyond question. *First*, by article three, section one, it is declared that "*the judicial power of the United States* shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office." *Secondly*, by article three, section two, it is declared that "*the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States*, and treaties made, or which shall be made, under their authority." Here it appears, first, who are the judges constituting the judicial power of the United States, and, secondly, what is the extent of this power. But a commissioner clearly is not a judge, or any part of the judicial power. Therefore, by inevitable conclusion, he cannot have jurisdiction of any "case arising under the Constitution." But the Supreme Court has expressly decided that the proceeding by a claimant for the delivery of an alleged slave "constitutes in the strictest sense a controversy between the parties, and *a case arising under the Constitution* of the

United States, within the express delegation of judicial power given by that instrument."[1]

And yet a commissioner, dressed in the smallest and briefest authority, is put forward to determine this great case under the Constitution, and his judgment is declared final, and even without appeal. The Fugitive Slave Act proclaims expressly that he "shall have *concurrent jurisdiction* with the judges of the Circuit and District Courts of the United States"; that he shall "hear and determine the case of the claimant in a summary manner"; and that his certificate "shall be conclusive of the right of the person or persons in whose favor granted to remove such fugitive to the State or Territory from which he escaped, *and shall prevent all molestation of such person or persons by any process issued by any court, judge, magistrate, or other person whomsoever.*"[2] Such are the plenary powers conferred upon the commissioner, together with an eminent jurisdiction concurrent with judges of the Circuit and District Courts. This Act, as originally introduced by Mr. Butler, before the substitute of Mr. Mason, intrusted this *concurrent jurisdiction* to the whole army of postmasters; but a trumpery commissioner, appointed by a court, is as little entitled to exercise it as a postmaster. It is not doubted, that, under existing statutes, a commissioner may be appointed to take depositions and acknowledgments of bail, and also to arrest, examine, and detain offenders for trial. Thus much a court may authorize; *but a court cannot delegate to a commissioner the power of trying a cause,* whether "a suit at Common Law," or "a case arising under the Constitution"; *nor can Congress authorize a*

[1] Prigg *v.* The Commonwealth of Pennsylvania, 16 Peters, S. C. R., 616.
[2] Act of September 18, 1850, Sections 4, 6.

court to delegate this power. The whole pretension is a discredit to the jurisprudence of the country.

Such are three principal objections to the constitutionality of this Act. One alone is enough. The three together are more than enough.

OTHER OBJECTIONS TO THE FUGITIVE SLAVE ACT.

BUT there are other objections, to which the Committee merely allude.

The offensive Act, defying the whole Law of Evidence, authorizes a judgment which despoils a man of his liberty on *ex parte* testimony, by affidavit, without the sanction of cross-examination.

It practically denies the writ of *Habeas Corpus*, ever known as the palladium of the citizen.

Contrary to the purposes declared by the framers of the Constitution, it sends the fugitive back "at the public expense." [1]

Adding meanness to violation of the Constitution, it bribes the commissioner by a double fee to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but saving him to Freedom, his dole is five dollars.

As it is for the public weal that there should be an end of suits, so, by the consent of civilized nations, these must be instituted within fixed limitations of time; but the Fugitive Act, exalting Slavery above even this practical principle of universal justice, ordains proceedings against Freedom without reference to lapse of time.

[1] Debates in the Federal Convention, August 28, 1787: Madison Papers, Vol. III. p. 1447.

Careless of the feelings and conscientious convictions of good men who cannot help the work of thrusting a fellow-being back into bondage, this Act declares that "all good citizens are hereby commanded to aid and assist in the prompt and efficient execution of this law";[1] and this injunction is addressed to all alike, not excepting those who religiously believe that the Divine mandate is as binding now as when it was first given to the Hebrews of old: "THOU SHALT NOT DELIVER *unto his master the servant which is escaped from his master unto thee:* he shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates where it liketh him best: thou shalt not oppress him."[2] The thunder of Sinai is silent, and the ancient judgments have ceased; but an Act of Congress, which, besides its direct violation of this early law, offends every sentiment of Christianity, must expect the judgments of men, even if it escapes those of Heaven. Perhaps the sorrows and funerals of this war are so many warnings to do justice.

But this Act is to be seen not merely in its open defiance of the Constitution, and of all legislative decencies; it must be considered, also, in two other aspects: first, in its consequences; and, secondly, in the character of its authors. The time has come, at last, when each of these may be exposed.

CONSEQUENCES OF THE FUGITIVE SLAVE ACT.

AND, first, as to its consequences. In the history of the African race these can never be forgotten. Since

[1] Act of September 18, 1850, Sec. 5.

[2] Deuteronomy, xxiii. 15, 16.

the first authorization of the slave-trade, nothing so terrible had fallen upon this unhappy people, whether we contemplate its cruelty to individuals or the wide-spread proscription which it launched against all whose skins were not white.

It is sad to know of suffering anywhere, even by a single lowly person. But our feelings are enhanced, when individual sorrows are multiplied, and the blow descends upon a whole race. History, too, takes up the grief. The Jews expelled from Spain by merciless decree, the Huguenots driven from France by the revocation of the Edict of Nantes, our own Puritan fathers compelled to exile for religious Freedom, — all these receive a gushing sympathy, and we detest the tyrants. These were persecutions for religion, in days of religious bigotry and darkness. But an American Congress, in this age of Christian light, not in the fanaticism of religion, but in the fanaticism of Slavery, did a deed that finds companionship only with these enormities of the past. The Fugitive Slave Act carried distress and terror to every person with African blood in the Free States. All were fluttered, as the arbitrary edict commenced its swoop over the land. The very rumor that a slave-hunter was in town so shook the nerves of a sensitive freeman on whom was the ban of color, that he died. To large numbers the Act was a decree of instant expulsion from the Republic, under penalty of Slavery to them and their posterity forever. Driven by despair, as many as six thousand Christian men and women, meritorious persons, — a larger band than that of the escaping Puritans, — precipitately fled from homes they had established, opportunities of usefulness they had found, and the regard of fellow-citizens, until, at

last, in an unwelcome Northern climate, beneath the British flag, with glad voices of Freedom on their lips, though with the yearnings of exile in their hearts, they were happy in swelling the chant, "God save the Queen!"

Such an injustice cannot be restricted in influence. Everywhere it is an extension of Slavery, with all the wrong, violence, and brutality which are the natural outgrowth of Slavery. The Free States became little better than a huge outlying plantation quivering under the lash of the overseer; or rather, they were a diversified hunting-ground for the flying bondmen, resounding always with the "halloo" of the huntsman. There seemed no rest. The chase was hardly over at Boston before it was started at Philadelphia, Syracuse, or Buffalo, and then again raged furiously across the prairies of the West. Not an instance occurred which did not shock the conscience of the country and sting it with anger. Records of the time attest the accuracy of this statement. Perhaps there is no example in history where human passion showed itself in grander forms, or eloquence lent all her gifts more completely to the demands of Liberty, than the speech of an eminent character, now dead and buried in a foreign land,[1] denouncing the capture of Thomas Sims at Boston, and invoking the judgment of God and man upon the agents in this wickedness. In the history of Humanity this great effort cannot be forgotten. But every case pleaded with an eloquence of its own, until, at last, occurred one of those tragedies darkening the heavens and crying out with a voice that will be heard. It was the voice of a mother standing over her murdered child. Margaret Gar-

[1] Rev. Theodore Parker, buried in the Protestant Cemetery at Florence.

ner escaped from Slavery with three children, but was overtaken at Cincinnati. Unwilling to behold her offspring returned to the shambles of the South, this unhappy person, described in the testimony as "a womanly, amiable, affectionate mother," determined to save them in the only way within her power. With a butcher-knife, coolly and deliberately, she took the life of one of the children, "almost white, and a little girl of rare beauty," and attempted, without success, to take the life of the other two. To the preacher who interrogated her she exclaimed: "The child was my own, given me of God to do the best a mother could in its behalf. I have done the best I could; I would have done more and better for the rest; I knew it was better for them to go home to God than back to Slavery." But she was restrained in her purpose. The Fugitive Slave Act triumphed, and, after the determination of sundry questions of jurisdiction, this devoted historic mother, with the two children remaining to her, and the dead body of the little one just emancipated, under a national escort of armed men, was hurried to the doom of Slavery. Her case did not end with this revolting sacrifice. So long as the human heart is moved by human suffering, the story of this mother will be read with alternate anger and grief, while it is studied as a perpetual witness to the slaveholding tyranny which then ruled the Republic with execrable exactions, destined at last to break out in war,—as the sacrifice of Virginia by her father is a perpetual witness to the decemviral tyranny which ruled Rome.

But Liberty is always priceless. There are other instances, less known, where kindred wrong has been done. Every case is a tragedy, under the forms of law. Worse

than poisoned bowl or dagger was the certificate of a commissioner, allowed, without interruption, to continue his dreadful trade. Even since the Rebellion has raged in blood, the pretension of returning slaves to their masters is not abandoned. The piety of Abraham, who offered up Isaac as a sacrifice to Jehovah, is imitated, and the country continues to offer up fugitive bondmen as a sacrifice to Slavery. It is reported on good authority, that among slaves thus sacrificed was one who by communications to the Government had been the means of saving upwards of one hundred thousand dollars. Here in Washington, since the beneficent Act of Emancipation, even in sight of the flag floating from the National Capitol, the Fugitive Slave Act has been made a scourge and a terror to innocent men and women.

If all these pains and sorrows had redounded in any respect to the honor of the country, or had contributed in any way to the strength of the Union, then we might confess, perhaps, that something at least had been gained. But, alas! there has been nothing but unmixed evil. The country has suffered in good name, while foreign nations have pointed with scorn to a republic which could legalize such indecencies. Not a case occurred which was not greedily chronicled in Europe, and circulated there by the enemies of liberal institutions. Even since the Rebellion began in the name of Slavery, the existence of this odious enactment unrepealed on our statute-book has been quoted abroad to show that the supporters of the Union are as little deserving of sympathy as Rebel Slavemongers. By the enforcement of this odious Act the Union has suffered from the beginning; for not a slave is thrust back into bondage with-

out weakening those patriotic sympathies, North and South, which are its best support. The natural irritation of the North, as it beheld all safeguards of Freedom overthrown and Slavery triumphant in its very streets, was answered by savage exultation in the South, which seemed to dance about its victims. Each instance was the occasion of new exasperations on both sides, which were skilfully employed by wicked conspirators "to fire the Southern heart."

AUTHORS OF THE FUGITIVE SLAVE ACT.

SUCH are some of the consequences of this ill-fated measure. But the duty of the Committee cannot be performed without glancing at its authors also. By an easy transition we pass from one to the other, for the two are in natural harmony. Each may be read in the light of the other.

And who were the authors of this Fugitive Slave Act? The answer may be general or special.

If general, it may be said that its authors were the representatives of Slavery, constituting that same Oligarchy, or Slave Power, which has madly plunged this country into civil war. Some of them, even at the time of its enactment, were already engaged in treasonable conspiracy against the Union. They thought little of any pretended interests in property; but they were occupied with two controlling ideas: first, how to unite their own people at home; and, secondly, how to insult and subjugate the Free States. The Fugitive Slave Act furnished a convenient agency for this double purpose, and was naturally adopted by men who had lost the power of blushing as well as the power of feeling.

Unquestionable facts show how little real occasion there was for this barbarous statute. It is now established by the report of the census in 1860, that the loss of slaves by escape was trivial. According to this document, "the whole annual loss to the Southern States from this cause bears less proportion to the amount of capital involved than the daily variations which, in ordinary times, occur in the fluctuations of State or Government securities in the city of New York alone." [1] Such a statement is most suggestive. Official tables furnish confirmatory details. From these it appears that during the year ending June 1, 1860, out of 3,949,557 slaves, only 803 were able to escape, being one to about five thousand, or at the rate of one fiftieth of one per cent. Then again, out of more than one million of slaves in the Border States in 1860, fewer than five hundred escaped. Such are authentic facts. Nor is this all. The slave who succeeded in escaping, even when reënslaved, was never afterwards regarded as good property. All the work he could do would not compensate for his bad example. Jefferson Davis, in the frankness of an address to his constituents at home in Mississippi, on the 11th July, 1851, said openly that he did not want any fugitive slaves sent into his State; that "such stock would be a curse to the land, — for, with the knowledge they had gained, they would ruin the rest of the slaves, and very probably give rise to the most dreadful consequences"; and he concluded by announcing, that "he would not have in his quarters a negro brought from the North on any account whatever." [2] And yet, in face of such authentic facts, showing how few escaped, and in face

[1] Preliminary Report on the Eighth Census, 1860, p. 12.
[2] Southern Press, August 8, 1851.

of an instinctive repugnance to any commingling with other slaves by those who had once tasted Liberty, this atrocious statute was enacted, and its enforcement was maintained at the point of the bayonet, while Jefferson Davis was Secretary of War.

There have been wars of *pretext;* but here was an act of legislation, which, whenever enforced, was a *Petty War,* and its origin was a pretext. It was nothing but a pretext, through which the representatives of Slavery sought to enforce a flagitious power. The pretext was worthy of the legislation, and both pretext and legislation were in harmony with the authors, who drew their motives of conduct from Slavery and nothing else. The same spirit which triumphed in this Fugitive Slave Act, on a pretext, has at last broken forth in rebellion, on a pretext also. Each was under pretext of maintaining Slavery, and each proceeded from the same influence.

Speaking, then, in general terms, the authors of the Fugitive Slave Act were the authors of the Rebellion. The one and the other have the same paternity, as unquestionably they have a family likeness.

If, however, we go still further, and seek the individual authors of this odious measure, the forerunner of the Rebellion, it is easy to point them out.

The bill was reported to the Senate by Mr. Butler, of South Carolina, so that in origin it may be traced directly to the hot-house of nullification, treason, and rebellion. But Mr. Mason, of Virginia, subsequently moved a substitute, which, being adopted, became the existing statute, and this enormity stalked into life under the patronage of a Senator from Virginia. Public report, which is entitled to belief, attributes this substi-

tute to the cunning hand of Mr. Faulkner, also of Virginia; but, on moving it in the Senate, Mr. Mason made it his own, and pressed it with untiring pertinacity, as the "Globe" amply attests, until it became the law of the land, so far as such a measure can in any just sense be "law."

But whether its authors be found in States or individuals, there is in it the same pernicious virus, which, breaking out first in South Carolina, inoculated Virginia, like the Rebellion itself. A Senator from Virginia took from South Carolina the final responsibility, as an aged madman from Virginia asked and obtained permission to point the first gun at Fort Sumter. Nor are the two events unlike in character. The Fugitive Slave Act was levelled at the Union hardly less than the batteries at Charleston, when they opened upon Fort Sumter.

Such are the authors, general and special, of this wickedness. The Senator from South Carolina is dead; but the representatives of Slavery still live, and so also do the two madmen from Virginia. Thus the representatives of Slavery, though now in open rebellion, continue, through unrepealed statute, to insult the loyal States, to degrade the Republic, and to rule the country which they tried to ruin. And thus two audacious Rebels, one the pretended Minister of the Rebellion at London, and the other an officer in the Rebel forces, still exert among us a malignant power, while, with a long arm not yet amputated, they reach even into the streets of Washington, and fasten the chains of the slave.

CONCLUSION.

To all this there is one simple answer, and Congress must make it.

A clause of the Constitution, contrary to all commanding rules of jurisprudence, has been interpreted to sanction the hunting of slaves; and the same clause, thus interpreted, has been declared, contrary to all testimony of history, to have been an original compromise of the Constitution and a corner-stone of the Union. On this clause, thus misinterpreted and thus misrepresented, an Act of Congress is founded, which, even assuming that the clause is strictly applicable to fugitive slaves, is many times unconstitutional, but especially in three several particulars: (1.) as a usurpation by Congress of powers not granted by the Constitution; (2.) as a denial of trial by jury in a case of personal liberty and a suit at Common Law; and (3.) as a concession of the case of personal liberty to the unaided judgment of a single petty magistrate, without any oath of office, constituting no part of the judicial power, — appointed, not by the President with the consent of the Senate, but by the court, — holding office, not during good behavior, but merely during the will of the court, — and receiving, not a regular salary, but fees according to each individual case. But even if this Act were strictly constitutional in all respects, yet, regarding it in its painful consequences and in its Rebel authors, it is none the less offensive; for from the beginning it was a scourge to the African race and a grievance to the whole country, a scandal abroad and a dead-weight upon the Union at home, while it was the arch contrivance of men who at the time were rebel at heart and are now in open

rebellion, devised as an insult to the Free States and as a badge of subjugation. Such a statute, thus utterly unconstitutional in every respect, and utterly mischievous in all its consequences and influences, while peculiarly obnoxious in its well-known authors, ought to be repealed without delay. If possible to parliamentary usage, it ought to be torn from the volumes of the law, so that there should be no record of such an abuse and such a shame.

Unhappily, the statute must always remain in the pages of our history. But every day of delay in its repeal is hurtful to the national cause and to the national name. Would you put down the Rebellion? Would you uphold our fame abroad? Would you save the Constitution from outrage? Would you extinguish Slavery? Above all, would you follow the Constitution and establish justice? Then repeal the statute at once.

EXCLUSION OF WITNESSES ON ACCOUNT OF COLOR.

REPORT, IN THE SENATE, OF THE COMMITTEE ON SLAVERY AND FREEDMEN, FEBRUARY 29, 1864.

FEBRUARY 8, 1864, on the day of introducing his Amendment of the Constitution, declaring that "all persons are equal before the law," Mr. Sumner asked, and by unanimous consent obtained, leave to bring in a bill to secure equality before the law in the courts of the United States, which was read the first and second times by unanimous consent, and, on his motion, referred to the Committee on Slavery and Freedmen. This was in harmony with other efforts on an earlier day.[1] February 29th, he reported the bill to the Senate without amendment, accompanied by the following report, of which three thousand extra copies were ordered to be printed for the use of the Senate. The success of this measure appears at a later date.[2]

THE Committee on Slavery and the Treatment of Freedmen, to whom was referred Senate Bill (No. 99) entitled "A Bill to secure equality before the law in the courts of the United States," have had the same under consideration, and ask leave to report.

BEFORE making a change in our laws, it is important to consider the nature and extent of what is proposed; especially is this the case, if the change will be far-reaching in influence. Therefore the Committee have thought best, in proposing to prohibit all exclusion

[1] *Ante*, Vol. VI. pp. 442, 502; Vol. VII. p. 152.
[2] *Post*, Vol. IX. pp. 39–46.

of colored testimony in the courts of the United States, to exhibit with some particularity the considerations bearing on the subject.

EXCLUSION OF COLORED TESTIMONY RECOGNIZED BY CONGRESS.

CONGRESS has never, in formal words, declared that witnesses in the courts of the United States shall be incompetent to testify on account of color. The abuse has arisen indirectly. But it is none the less fastened upon the national jurisprudence. By Act of July 16, 1862, it was provided "that the laws of the State in which the court shall be held shall be the rules of decision as to the competency of witnesses in the courts of the United States, in trials at Common Law, in Equity, and Admiralty."[1] And this rule, thus authoritatively declared, had been practically recognized by the courts of the United States from the beginning of the Government. It appears from the Judiciary Act of 1789, under which the national courts were organized, that jurors in these courts "shall have the same qualifications as are requisite for jurors by the laws of the State of which they are citizens"; and still further, "that the laws of the several States, except where the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at Common Law in the courts of the United States, in cases where they apply."[2] Under these injunctions it was very easy, if not natural, for the national

[1] Acts 37th Cong. 2d Sess., Ch. CLXXXIX. Sec. 1: Statutes at Large, Vol. XII. p. 588.

[2] Acts 1st Cong., Ch. XX. Sec. 29, 34: Ibid., Vol. I. pp. 88, 92.

courts to adopt the law of evidence in the States where they were respectively held; and thus the incapacity of colored testimony in those States where it prevailed became a rule of evidence in the national tribunals.

It is plain that such a system made the administration of justice differ in different States. The same statute might be successfully administered in a State where there was no exclusion of colored testimony, and miserably fail in another State where such exclusion prevailed; and the same judge might be called in one court to admit the testimony, and in another court to reject it. But the least objection to this system is its want of uniformity. In lending the sanction of the United States, even indirectly, to an exclusion founded on color, all the people have been made parties to injustice.

To appreciate the true character of this proscription, we must repair to the Slave States, where it is declared, and consider it in the very language, legislative and judicial, by which it is maintained, not neglecting the eccentricities of judicial opinion by which it has been illustrated. From the statement of the rule its consequences will become apparent. It may be proper afterwards to glance at the associate examples of history, and also to endeavor to comprehend the reasons on which the proscription has been vindicated.

EXCLUSION OF COLORED TESTIMONY IN THE SLAVE STATES.

THE Committee begin with the statutes of the States where this proscription prevails. Each State will be considered by itself.

(1.) In Delaware the rule assumes its mildest form, yet even there it is indefensible. It has been expressed by Chief Justice Bayard, who, in an opinion of the court, said: "On the introduction of Negro Slavery into this country, it became a settled rule of law that slaves should not be suffered to give evidence in any matter, civil or criminal, affecting the rights of a white man."[1] In this spirit the Revised Code of Delaware has provided that "to give evidence against any white person" is one of the "rights of a freeman."[2] But the rule is thus applied: "In criminal prosecutions, a free negro, or free mulatto, if otherwise competent, may testify, if it shall appear to the court that no competent white witness was present at the time the fact charged is alleged to have been committed, or that a white witness, being so present, has since died, or is absent from the State, and cannot be produced: *Provided*, that no free negro or free mulatto shall be admitted as a witness to charge a white man with being the father of a bastard child."[3] With this exception, the free negro or mulatto is disqualified as a witness against a white person.[4] But colored testimony is admissible in a case between colored persons, or against a colored person where the other party is white.[5]

The subtilties in the application of this rule appear in a decided case, where one of three accomplices was indicted for kidnapping a colored boy. The latter was opposed as a witness, on the ground that a competent white witness, an accomplice who had not been indicted,

[1] State *v.* Whitaker, 3 Harrington, R., 550.
[2] Ch. 52, § 12.
[3] Ch. 107, § 4.
[4] Ch. 52, § 12.
[5] Elliott *v.* Morgan, 3 Harrington, R., 317.

might be produced. But the court, considering that the statute was originally enacted to remedy injustice to free persons of color, construed it liberally, and admitted the testimony of the colored boy, on the ground that the commission of an offence by two or more persons ought not to render a witness incompetent, who would be competent, if the offence had been committed by only one person. It was further said, that the statute, when it speaks of a competent white witness, means not merely his competency in the common sense of the term, but the sufficiency of his evidence under ordinary circumstances to produce conviction, — although a jury was directed to acquit the prisoner, unless part of the accomplice's testimony was confirmed by unimpeachable evidence.[1] In another case, where two white witnesses, not accomplices, were present at an assault, the court at first excluded the testimony of the colored person; but when it afterwards appeared that one of them was drunk and the other did not see the whole transaction, although both knew that a blow was struck, the testimony of the colored person was admitted.[2]

Still further, it has been declared in Delaware, that, on indictment of a white man for kidnapping a free colored person, the latter is not competent to prove his freedom.[3] So, also, in an action against a stage-coach proprietor for aiding in the escape of a slave, the admission of the latter that he is slave of the plaintiff cannot be received.[4] But a free colored person may make oath to his book of original entries, and thus make it evidence even against a white person, on the declared

1 State *v.* Whitaker, 3 Harrington, R., 549.
2 State *v.* Cooper, Ibid., 571.
3 State *v.* Jeans, 4 Ibid., 570.
4 Redden *v.* Spruance et als., Ibid., 217.

ground that "it would be idle [for the law] to recognize in persons of color the right to hold property, and to obtain redress in law and equity for injuries to person or property, if the means of this redress be denied them."[1]

Prior to the statute originally passed in 1799, where a white person committed an assault on a colored woman, and there was no third person present, the latter was held as a witness;[2] but where several white persons were present, the colored person was held incompetent.[3]

(2.) In Maryland, the Act of 1717, Ch. 13, § 2, provides that "no negro or mulatto slave, free negro, or mulatto born of a white woman during his time of servitude by law, or any Indian slave, or free Indian natives of this or the neighboring provinces, be admitted and received as good and valid evidence in law, in any matter or thing whatsoever depending before any court of record, or before any magistrate within this province, wherein any Christian white person is concerned." Yet, nevertheless, according to this same Act, § 3, where other sufficient evidence is wanting against any negro, in such case the testimony of any negro may be heard and received in evidence, according to the discretion of the several courts of record or magistrate before whom such matter or thing against such negro shall depend, provided such testimony do not extend to depriving them of life or member.

The same system is pursued in the later Act of 1796, Ch. 67, § 5, which provides that manumitted slaves

[1] Webb *v.* Pindergrass, 4 Harrington, R., 439.
[2] State *v.* Bender, 3 Ibid., 572, note.
[3] Collins *v.* Hall, Ibid., 574, note.

shall not be allowed "to give evidence against any white person," nor be received "as competent evidence to manumit any slave petitioning for freedom." But by Act of 1808, Ch. 81, § 1, it is provided, that, in all criminal prosecutions against any negro or mulatto, slave or free, the testimony of any negro or mulatto, slave or free, "may be received in evidence for or against them, any law now existing to the contrary notwithstanding."

The original Act of 1717 does not in terms extend to free mulattoes, and the Act of 1796 does not extend to the issue of manumitted slaves. But where "a free-born white Christian man" was convicted of felony on the testimony of a mulatto born of a manumitted negro, there was among the judges in the Court of Appeals such diversity of opinion on the legality of the testimony that no decision was ever given.[1] In another case it was decided, that, where both parties are "free white Christian persons," a free colored person is incompetent,[2] although a mulatto descended in the female line from a white woman is competent.[3]

(3.) In Virginia, the Code declares positively that "a negro or Indian shall be a competent witness in a case of the Commonwealth for or against a negro or Indian, or in a civil case to which only negroes or Indians are parties, *but not in any other case.*"[4] The decisions of the courts illustrate this proscription. Thus, it has been adjudged that a free colored person cannot testify for a white person, even against a colored person.[5]

[1] State *v.* Fisher, 1 Harris and Johnson, R., 750.
[2] Rusk *v.* Sowerwine, 3 Ibid., 97.
[3] Sprigg *v.* Negro Mary, Ibid., 491.
[4] Ch. 176, § 20.
[5] Winn *v.* Jones, 6 Leigh, R., 74.

In another case a question was incidentally raised on the competency of a colored convict as a witness against another convict, with regard to an offence committed in the penitentiary, and it was suggested that convicts generally might be witnesses against each other.[1] This question, however, was subsequently disposed of by a provision declaring, that, on the prosecution of a convict, "all other convicts in the penitentiary shall be competent witnesses for or against the accused, *except that negroes shall not be allowed as witnesses against a white person.*"[2] They may, however, testify in his favor.

(4.) In Kentucky, the Revised Statutes provide that "a slave, negro, or Indian shall be a competent witness in a case of the Commonwealth for or against a slave, negro, or Indian, or in a civil case to which only negroes or Indians are parties, *but in no other case.* This shall not be construed to exclude an Indian in other cases, who speaks the English language and understands the nature and obligation of an oath."[3] Under this provision, as under that of Virginia, it has been decided that a free colored person cannot be a witness for a white person against a colored person.[4]

(5.) In North Carolina, the Revised Statutes provide that "all negroes, Indians, mulattoes, and all persons of mixed blood descended from negro and Indian ancestors to the fourth generation inclusive, (though one ancestor of each generation may have been a white person,) whether bond or free, shall be deemed and taken to be *incapable in law to be witnesses in any case whatsoever,*

[1] Johnson *v.* The Commonwealth, 2 Grattan, R., 581.
[2] Code of Virginia (1849), Ch. 215, § 9.
[3] Ch. 107, § 1. See Tumey *v.* Knox, 7 T. B. Monroe, R., 91.
[4] Page *v.* Carter, 8 B. Monroe, R., 192.

except against each other."[1] Under this statute they cannot testify for each other in a criminal case. But the decisions furnish curious illustrations. Thus, when a colored person was convicted on colored testimony as a principal felon, it was subsequently held, on trial of the white accessory, that the record of the conviction was only *primâ facie* evidence of guilt.[2] In another case it was held that a free colored woman could not make affidavit charging a white man as father of her illegitimate child,[3] although the contrary has been decided in Kentucky, on the assumption that the act is merely preliminary to the real controversy.[4]

(6.) In Tennessee, the Act of 1794, Ch. 1, § 32, provides that "all negroes, Indians, mulattoes, and all persons of mixed blood descended from negro and Indian ancestors to the third generation inclusive, (though one ancestor of each generation may have been a white person,) whether bond or free, shall be taken and deemed to be incapable in law to be witnesses in any case whatever, *except against each other: Provided,* That no person of mixed blood in any degree whatsoever, who has been liberated within twelve months previously, shall be admitted as a witness against a white person." Under this Act, evidently borrowed from the earlier statute of North Carolina, it was decided that a colored person could not be a witness *for* another colored person. The judge who pronounced the opinion of the court seems to confess the harshness of the rule, when he says: "The cases under this Act in which these disqualified persons

[1] Ch. 111, § 50; Act 1777, Ch. 115, § 42; Act 1821, Ch. 1123. See State v. Ben, 1 Hawks, R., 434.

[2] State v. Chittem, 2 Devereux, R., 49.

[3] State v Patton, 5 Iredell, Law Rep., 186.

[4] Williams v. Blincoe, 5 Littell, R., 171.

can be witnesses for each other are when, plaintiff and defendant both being men of color, the witnesses may at the same time be said to be reciprocally witnesses against each of the parties. Perhaps the practice in Tennessee may have been heretofore much more liberal than the statute. With that we have nothing to do. As the law speaks, so it is our duty to speak."[1] To remedy this gross injustice, the Act of 1839, Ch. 7, § 1, was passed, providing that such parties, "whether bond or free, shall be taken and deemed to be good witnesses for each other in all cases, where, by the provisions of said Act [viz. Act of 1794], they are made competent witnesses against each other in criminal prosecutions."[2]

(7.) In South Carolina there appears to have been no statute expressly excluding the testimony of a slave against a white person, although the early Act of 1740, § 39, necessarily implies this exclusion.[3] But the rule was autochthonous. It sprang from the soil without statute. Judge O'Neall, in an Essay on the Slave Laws, declares that "a slave cannot testify, except as against another slave, free negro, mulatto, or mestizo, and that without oath."[4] But the exclusion did not bear merely upon slaves. The judge announces that "free negroes, mulattoes, and mestizoes cannot be witnesses or jurors in the superior courts; . . . . they cannot even be witnesses in inferior courts, with the single exception of a magistrate's and freeholder's court, trying slaves or free negroes, mulattoes or mestizoes, for criminal of-

[1] Jones v. The State, Meigs, R., 121.

[2] Nicholson's Supplement to the Statutes, 131.

[3] 7 Statutes at Large, 411

[4] 2 De Bow, Industrial Resources, etc., of the Southern and Western States, 279.

fences, and then without oath."[1] It appears that the Act of 1740, §§ 13, 14, on which this custom was founded, applies only to free Indians and slaves;[2] so that, strictly, free negroes, mulattoes, and mestizoes are not despoiled of their right at Common Law to be heard under oath, but the uniform practice under the Act, according to the judge, has been otherwise.[3] On another occasion, another judge of South Carolina says: "There is no instance in which a negro has been permitted to give evidence, except in cases of absolute and indispensable necessity; nor, indeed, has this court ever recognized the propriety of admitting them in any case where the rights of white persons were concerned."[4] In still another case it was decided that a free person of color is not competent in any case in a court of record, although both parties are of the same class with himself.[5]

The rule thus rigorously declared has given rise to some strange illustrations. Thus, for instance, in a suit to recover certain slaves as part of a gang named, evidence was admitted that other negroes of the defendant were accustomed to speak of those in question as belonging to the gang.[6] In another case, where the book of a tradesman was made up from the entries of a negro workman on a slate, and notice was affixed to the door of the shop that all credits there would be charged according to the negro's entries, the Court doubted whether the book could be evidence at all, —

[1] 2 De Bow, 274.
[2] 7 Statutes at Large, 401, 402.
[3] 2 De Bow, 274.
[4] White *v.* Helmes, 1 McCord, R., 435.
[5] Groning *v* Devana, 2 Bailey, R., 192.
[6] Heyward *v.* Glover, Riley, Chan. Rep., 53.

but if at all, only as to the amount of work done, and then only against a person otherwise proved to be a customer.[1]

(8.) In Georgia, as in South Carolina, there is no statute expressly excluding the testimony of a slave where white persons are parties. But they are excluded. The Act of 1770, declaring slaves to be chattels personal to all intents and purposes whatsoever, provides further, "that the evidence of any free Indians, mulattoes, mestizoes, or negroes, or slaves, shall be allowed and admitted in all cases whatsoever for or against another slave accused of any crime or offence whatsoever, the weight of which evidence, being seriously considered and compared with all other circumstances attending the case, shall be left to the justices and jury."[2] But where white persons are parties, the rule of exclusion seems implied. And the same exclusion seems also implied in the later Act of December 19, 1816, § 5, where the rule, that "any witness shall be sworn who believes in God and a future state of rewards and punishments," is restricted to "the trial of a slave or free person of color."[3]

(9.) In Alabama the exclusion stands on positive statute. The Code provides that "negroes, mulattoes, Indians, and all persons of mixed blood descended from negro or Indian ancestors to the third generation inclusive, though one ancestor of each generation may have been a white person, whether bond or free, must not be witnesses in any cause, civil or criminal, except for or against each other."[4]

[1] Gage *v.* M'Ilwain, 1 Strobhart, R., 185.
[2] Section 10: Cobb's Digest, 973.
[3] Cobb's Digest, 988.
[4] Section 2276; see, also, Section 3596.

(10.) In Mississippi, the Act of June 28, 1822, is nearly the same in language with the Code of Alabama on this subject.[1] But by Act of January 19, 1830, free Indians are placed on the same footing as white persons, and consequently can testify.[2]

(11.) In Florida the law is brief and explicit. The Act of November 21, 1828, § 16, provides that "any negro or mulatto, bond or free, shall be a good witness in the pleas of the State for or against negroes or mulattoes, bond or free, or in civil cases where free negroes or mulattoes shall alone be parties, and in no other cases whatever."[3]

(12.) In Missouri, the Revised Statutes provide that "no negro or mulatto, bond or free, shall be a competent witness, except in pleas of the State against a negro or mulatto, bond or free, or in civil cases in which negroes or mulattoes alone are parties."[4] But it has been decided, that, if a free negro is party to the record, even though he vouches in a white person to defend his title, colored testimony is admissible.[5]

(13.) In Arkansas, the Revised Statutes provide that "no negro or mulatto, bond or free, shall be a competent witness in any case, except in cases in which all the parties are negroes or mulattoes, or in which the State is plaintiff and a negro or mulatto, or negroes or mulattoes, are defendants."[6]

(14.) In Louisiana, the Revised Statutes provide that "no slave shall be admitted as a witness, either

[1] Sections 110, 111: Hutchinson, Code, 861.

[2] Hutchinson, Code, 136. Harris *v.* Newman, 3 Smedes and Marshall, R., 575, 576; Coleman *v.* Doe, 4 Ibid., 40.

[3] Thompson's Digest, 542.

[4] Ch. 187, § 22.

[5] Meechum *v.* Judy, 4 Missouri Rep., 361.

[6] Ch. 158, § 25.

in civil or criminal matters, for or against a white person"; and also, "no slave shall be admitted as a witness, either in civil or criminal matters, for or against a free person of color, except in case such free individual be charged with having raised, or attempted to raise, an insurrection among the slaves of this State, or adhering to them by giving them aid or comfort in any manner whatsoever."[1]

The Civil Code declares "absolutely incapable of being witnesses to testaments" "women of what age soever," and "slaves."[2] But the Civil Code has provided expressly that "the circumstance of the witness being a free colored person is not a sufficient cause to consider the witness as incompetent, but may, according to circumstances, diminish the extent of his credibility";[3] so that a free colored person in Louisiana may be a witness for or against a white person, subject to inquiry as to the value of his testimony.

(15.) In Texas, the Act of May 13, 1846, provides that "all negroes and Indians, and all persons of mixed blood descended from negro ancestry to the third generation inclusive, though one ancestor of each generation may have been a white person, shall be incapable of being a witness in any case whatever, except for or against each other."[4]

SUMMARY STATEMENT OF THE RULE.

FROM this review of the provisions in the different States it appears, that, with slight differences, there is

[1] Consol. and Rev. Stat., 556; Act of 1816, Ch. 146, §§ 1, 2.
[2] Art. 1584.
[3] Art. 2261; see, also, Art. 177.
[4] Hartley's Digest, Art. 2586.

nevertheless a prevailing resemblance, such as becomes the sisterhood of Slavery.

"Facies non omnibus una,
Nec diversa tamen; qualem decet esse sororum." [1]

If the recital seems weary, it has not been superfluous, for it has disclosed the disgusting terms of that proscription. It is difficult to read the provisions in a single State without impatience; but the recurrence of this injustice, expressed with such particularity in no less than fifteen States,[2] makes impatience swell into indignation, especially when it is considered that in every State this injustice is adopted and enforced by the courts of the United States.

Slaves cannot testify in any of the States for or against a white person in any case, either civil or criminal, — unless, perhaps, in Maryland they may be allowed to testify against a white person who is not a Christian.

Free persons of color are also, like slaves, incompetent to testify for or against white persons, except in Delaware and Louisiana, where, under circumstances already stated, they may testify, even though a white person is a party.

It may be observed, also, that the statutes of Delaware, Virginia, Kentucky, South Carolina, Georgia, Florida, Missouri, Arkansas, Louisiana, and Texas do not expressly include Indian slaves; but probably only a few slaves are of pure Indian blood. Those of mixed Indian descent would undoubtedly be classed with mulattoes, and share their incapacity.

[1] Ovid, Metamorph., Lib. II. 13, 14.

[2] No allusion is made to Free States where exclusion on account of color was recognized.

ECCENTRICITIES OF JUDICIAL DECISIONS.

THE rule is seen also in judicial decisions, which may be classed among the eccentricities of jurisprudence. Subtilty is a common attribute of courts, but in these cases subtilty at times becomes fantastic. Reading them, we may well confess that truth is stranger than fiction.

Thus, although slaves are not permitted to testify, their conversation or declarations may, under certain circumstances, be admitted in evidence. For instance, according to a decision in Missouri, if a white person converses with a slave, the conversation, being otherwise admissible, may be proved by any other white person who heard it. In this case, Judge Scott said: "That negroes cannot testify against white persons is clear; but this rule cannot be carried so far as to exclude the conversation of a negro with a white person, when the conversation on the part of the negro is merely given in evidence as an inducement and in illustration of what was said by the white person. If the conversation of the negro had been proved by herself, then it would clearly have been illegal. Here the State proved by competent witnesses that certain remarks were made to the plaintiff in error in order to show what her reply was. It is a matter of indifference by whom they were made. All that was required was to prove by competent evidence that they were made. That they were made is a fact which may be proved like any other fact in the cause."[1]

On the same principle, it has been decided that any remarks by a slave to a white person, calling for some reply on the part of the latter, may be proved by the

[1] Hawkins v. The State, 7 Missouri Rep., 192.

testimony of white persons, in order to show the nature of that reply, or that none was made. The question arose on an indictment for enticing a slave, when Judge Goldthwaite said: "The question which the Court is called upon to determine is simply whether the admission of a white man to the truth of any statement made by a slave in his presence and hearing can be inferred from his silence. The rule in relation to evidence of this character, so far as we are able to deduce it from adjudged cases and the best elementary writers, is, that the statement must be heard and understood by the party affected by it, that the truth of the facts embraced in it must be within his knowledge, and that the statement must be made under such circumstances and by such persons as naturally to call for a reply. To reject the evidence in the case under consideration, solely on the ground that the party making the declaration was a slave, would be in effect to decide that under no conceivable circumstances could a statement made by a slave call for a response from a white man, — a proposition in direct opposition to our daily observation and experience. That the declaration was made by a person whose condition rendered him incompetent as a witness does not in the slightest degree affect the principle on which evidence of this character rests. If the declaration was made by a slave, and the party affected by it had made by his reply a direct admission of its truth, there could be no doubt of the admissibility of the statement and reply; and in cases of implied admissions, the admission, instead of being made by language, is made by the silence of the party."[1]

There seems no end to the illustrations of this exclu-

[1] Spencer v. The State, 20 Alabama Rep., 27.

sion; as, for instance, when a colored woman acted as interpreter between a testator and the person who drafted the will. In this case, Judge Lumpkin said: "We hold, that, if a negro interpreter, incapable by law of being sworn, is the *only* channel of communication between the testator and writer of the will, and there be no other evidence of the testator's knowledge of its contents or his assent thereto than that which is derived through this medium, the will cannot be executed. But if the will be written in the presence of the testator, and, in a language which he understands, it is read over to him, and his dictation and approval of the instrument are interpreted by a negro in his hearing, and in the hearing of others interested in its contents, and he signifies no dissent thereto by signs or otherwise, but, on the contrary, is understood to express himself satisfied, the will may be established, especially if it appears to have been made in conformity to the previously declared intentions of the testator as to the disposition of his property."[1]

It has been decided that the incapacity of a free colored person will not prevent him, even in a proceeding against a white person, from making an affidavit required to obtain a continuance, a new trial, absent testimony, or bail, or from swearing to a plea of *non est factum.* He may also bind a white person to keep the peace, or make affidavit for a writ of *Habeas Corpus;* and generally he may make such affidavits as may be necessary to commence a suit, or to procure such orders or steps to be taken therein as may be required to bring on a trial.[2]

[1] Potts et al. *v.* House, 6 Georgia Rep., 348.

[2] De Lacy *v.* Antoine et als., 7 Leigh, R., 438; Commonwealth *v.* Oldham, 1 Dana, R., 466; Williams *v.* Blincoe, 5 Littell, R., 171; 2 De Bow, 274.

Without this capacity, he would, according to Chief Justice Robertson, of Kentucky, "be virtually disfranchised." But the Chief Justice adds, that, when he is swearing to facts against a white man, to compel him to keep the peace, "he is not a witness, but a party swearing to what any other party may."[1] And thus his incapacity as witness is still recognized.

In another class of cases, where it became necessary to show the mental condition or bodily health of the slave, his declarations have been held to be admissible, even in a suit against a white person; but they must be proved by white testimony. Thus, in an action for breach of covenant in not teaching a slave bound apprentice to the business of coach-making, the defendant having offered to prove, that, when he wished to instruct the slave, and threatened to punish him, if he did not apply himself, the latter, as soon as the defendant was out of the way, would declare "that he did [not] care about learning the trade, it was no profit to him, and if he could avoid the lash, it was all he cared for," — it was held by that prominent magistrate, Mr. Justice Gaston, of North Carolina, that the declarations of the slave were admissible, "because his disposition and temper are subjects of investigation, and these cannot be ascertained but through the medium of such external signs."[2] In another case the same question occurred under these circumstances: A slave was hired by his master to work in certain gold mines; but, while busy at the bottom of a shaft one hundred and eighty feet deep, he was struck on the head by an iron drill weighing five pounds, which fell from the top, and his skull

[1] Commonwealth v. Oldham, 1 Dana, R., 467.
[2] Clancy v. Overman, 1 Devereux and Battle, R., 402.

was fractured so that trepanning became necessary, and "a large piece of the skull-bone was cut out." In an action by the master for damages, Judge Pearson commented on this rule of evidence: "It being material to ascertain the bodily condition of the slave, his complaints of headache when exposed to the sun, and his declarations that he was unable to work in the sun or to endure hard labor are admissible. . . . . The statute excluding the testimony of a slave or free person of color against a white man has no application. The distinction between natural evidence and personal evidence, or the testimony of witnesses, is clear and palpable. The actions, looks, and barking of a dog are admissible as natural evidence upon a question as to his madness. So the squealing and grunts or other expression of pain made by a hog are admissible upon a question as to the extent of an injury inflicted on him. This can in no sense be called the testimony of the dog or the hog. The only advantage of this natural evidence, when furnished by brutes, over the same kind of evidence, when furnished by human beings, whether white or black, is, that the latter, having intelligence, may possibly have a motive for dissimulation, whereas brutes have not; but the character of the evidence is the same, and the jury must pass upon its credit."[1]

The same principle has been recognized in still another case, where the slave died of mortification in the bowels, and no physician was called in until the day before his death, although his illness had continued for three weeks. On this occasion Judge Green said: "The statement of a sick slave as to the seat of his pain, the nature, symptoms, and effects of his malady,

[1] Biles v. Holmes et als., 11 Iredell, Law Rep., 21.

is as well calculated to illustrate the character of his disease as would be the statements of any other person. They are, therefore, equally admissible for that purpose. But whether expressions indicating the nature and effects of a disease uttered by the sick person are real or feigned is for the jury to determine."[1] And this principle has also been recognized in suits for breach of covenant in the warranty of a slave, or for fraud in the sale of a slave.[2] But if the master distinctly warrants the slave sound, he is not allowed to relieve himself of liability for this false warranty by declarations of the slave to the purchaser that he is diseased. A curious case occurred in Kentucky, which illustrates this principle, and also the brutality of Slavery. A poor slave woman was very ill, when her master formed "the intention of selling her, lest he should lose her value by death." Notwithstanding her pitiable condition, he succeeded in disposing of her for two hundred dollars, one quarter in a note and the remainder in saddle-trees, on the representation that she was "hearty and sound, and fit for business." Although the slave woman, before the sale, told the purchaser of her sickness, the Court annulled the sale, and directed the note and the price of the saddle-trees to be given up, saying: "The slave herself told the purchaser of her sickness before the sale; and after the sale, when informed by him that he had bought her, she stated she could not be of any use to him, as she was near death. When it is recollected that frequently, on such occasions, there is a strong indisposition in such

[1] Yeatman et al. v. Hart, 6 Humphreys, R., 377. See, also, Marr v. Hill et al., 10 Missouri Rep., 320; M'Clintock v. Hunter, Dudley, So. Car. Law Rep., 327; Brown v. Lester, Georgia Decisions, Part I. p. 77.

[2] Roulhac v. White et al., 9 Iredell, Law Rep., 63; Jones v. White, 11 Humphreys, R., 268.

creatures to be sold, and that by stratagem, to avoid a sale, they may frequently feign sickness, or magnify any particular complaint with which they are affected, the purchaser might well disbelieve her story, especially when the words of the master assured him to the contrary. For his own statements the master is responsible, and ought not to be permitted to release himself of responsibility for his own falsehoods by showing that the slave at the time so far corrected him as to tell the truth." [1]

The principle underlying the admission of the declarations of a slave is plainly, but brutally, expressed by Judge Pearson, of North Carolina. We have already seen, that, according to this learned judge, who was for the time the voice of the law, the declarations of the slave are not to be regarded as his *testimony*, any more than the barking of a dog or the grunting of a hog "can be called the testimony of the dog or the hog." The slave complains of his sickness in words, the dog moans, the hog squeals; but the law regards these expressions of suffering alike. They may be proved as facts by competent evidence; but the slave himself cannot testify what his complaints were, any more than the dog or the hog.[2]

Such are eccentricities of judicial opinion on this important question. They are not to be regarded merely as curiosities, for they are all adopted and enforced in the national courts; so that even the most brutal language becomes not merely the voice of the law, but the voice of the nation also.

[1] Brownston *v.* Cropper, 1 Littell, R., 176.

[2] Biles *v.* Holmes et als., 11 Iredell, Law Rep., 20, 21. See, also, Maddin *v.* Edmondson, 10 Missouri Rep., 643.

CONSEQUENCES OF THIS EXCLUSION.

THUS do decisions of courts, as well as statutes, conspire to exhibit this rule in revolting features. If we glance for one moment at its consequences, there will be new occasion to condemn it.

Looking at it in a single aspect, consequences appear which baffle the imagination to picture. Throughout the States where this exclusion prevails, any white person may torture and maltreat a slave in any conceivable manner and to any extent, or he may overwork and starve him, or he may whip him to death, murder him in cold blood, or burn him alive; and so long as he is the only white person present, the laws afford him the most complete immunity from punishment, except in Delaware and Louisiana, where also he is safe, if only slaves are present. It is true that the same laws profess to punish the murder of a slave as a capital offence, and also to punish severely any mutilation or other cruel treatment of him. But such laws are nothing. So long as the slave himself is not allowed to testify, so long the laws will be justly obnoxious to the charge of actually authorizing a white person to inflict any outrage upon him, even to the extent of taking life with impunity. Every white person with only slaves about him, or, it may be, with only colored persons, slave or free, has *a letter of license* to commit any outrage which passion or wickedness may prompt.

The exposed condition of slaves, on account of incapacity to testify, was recognized in the early legislation of South Carolina. The preamble to Section 39 of the Act of 1740 begins as follows: "And whereas, by reason of the extent and distance of plantations in this Prov-

ince, the inhabitants are far removed from each other, *and many cruelties may be committed on slaves, because no white person may be present to give evidence of the same.*"[1] Thus, even out of the mouth of South Carolina, before this State had learned to sacrifice everything to Slavery, we learn that "many cruelties may be committed on slaves" under operation of this rule. But no such confession was needed. The truth is apparent to the most superficial observer. Had South Carolina, at that early day, followed the suggestion of her own statute, she would have begun a career of civilization under which Slavery itself must have disappeared.

The exposed condition of slaves on this account is curiously attested by other statutes of the Slave States, showing that plantations far removed from cities, and at considerable distance from each other, are committed to the direction of *a single white overseer*, who, from the circumstance that he is the only white person present, is placed beyond all restraint or correction. Thus, in South Carolina,[2] in Florida,[3] in Georgia,[4] and in Louisiana,[5] the statutes exact the continued residence of *one white person* on every plantation, with a specified number of working slaves. These statutes had their origin in no sentiment of justice or humanity, but, as appears in early declarations, in a desire to prevent the harboring of fugitive slaves, who might find asylum among those exclusively of their own color. If, however, it was thought

[1] 7 Statutes at Large, 411.

[2] Act 1740, § 46, 7 Statutes at Large, 413; Act 1800, § 5, Ibid., 442; 3 McCord, R., 363.

[3] Act 1846, Ch. 87, § 12, Thompson's Digest, 176; Act November 21, 1828, § 43, Ibid., 511.

[4] Act December 20, 1823, § 2, 2 Cobb's Digest, 996; Act May 10, 1770, § 43, Ibid., p. 981.

[5] Act 1814, Ch. 32, §§ 1–3, Consol. and Rev. Stat., p. 525.

necessary for any purpose to require by penalties the continued residence of *even one white person* on a slave plantation, it is reasonable to infer that there must be many plantations where there is only one white person. And to one white person thus situated, and thus removed from all check or observation, the law commits the government and guardianship of slaves on a plantation, and promises him in advance the most complete impunity for all that he does, even to the extent of cold-blooded murder, provided only that he is careful to let no white person see the deed.

This proscription is not confined to slaves. Free colored persons, under operation of this rule, are exposed to the same fearful wrongs. A white person may treat them as he treats a slave, and they are absolutely without remedy. It would be difficult to point out any law, the spawn of cruelty or tyranny, in ancient or modern times, exceeding in atrocity that by which a free population is thus despoiled of protection on account of color. It was one of the boasts of Magna Charta that justice should be denied to no person,—"*Nulli negabimus justitiam*"; but under this rule it is denied to a whole race.

Of course, the race, whether bond or free, which is thus despoiled, suffers. But this is not all. Justice itself also suffers. Crime, even against white persons in the presence of colored persons, must go unpunished.

And yet this proscription is adopted and enforced in the courts of the United States.

There are other aspects of this subject which invite attention. History has her lessons. Reason also speaks with a voice that must be heard. It becomes important, therefore, to consider this proscription, first, in its origin and the examples of history, and, secondly, in the grounds on which it is founded.

EXAMPLES OF HISTORY.

THIS proscription, or its equivalent, is traced to the earliest age. It belongs to the Barbarism of Slavery. Even as applied to free colored persons, it must be considered as a relic of Slavery not yet removed out of sight.

The rule may also be treated as belonging to that system of evidence which, in defiance of reason, undertook to declare in advance that certain classes of witnesses were incompetent to testify, — or, in other words, that the court and jury should not be permitted to hear what they had to say on the issue. In the early Common Law numbers were excluded who are now admitted to testify; and the Committee cannot err, when they declare that the plain tendency of recent legislation, and also of judicial decisions, in England and in the United States, has been to limit the exclusion of witnesses, allowing the court and jury, on hearing their testimony, to estimate its weight and value. The whole system of exclusion was covered with ridicule by Jeremy Bentham,[1] who exposed its irrational character. In our own country it has been treated in a similar spirit, in a series of masterly essays on the Rules of Evidence, by the present learned Chief Justice of Maine, Hon. John Appleton.[2] Its origin may be traced to ignorance and prejudice. There was a time, when, in Great Britain, at least on the borders of England and Scotland, "an Englishman could

[1] Introductory View of the Rationale of Evidence, Ch. XIX.–XXII.; Rationale of Judicial Evidence, Book IX.: Works (Edinburgh, 1843), Vols. VI. pp. 86–116, VII. 335–563.

[2] An elaborate letter to Mr. Sumner from this distinguished authority on the exclusion of colored testimony was annexed to this Report, — Senate Reports, 38th Cong. 1st Sess., No. 25, pp. 18 – 28.

not be a witness against a Scot, nor a Scot against an Englishman, by reason of the enmity between the two nations; . . . . so that, if never so many Englishmen should with their open eyes see a Scot commit murder, their testimony would signify nothing, unless some Scot or other testified the same thing."[1] But their exclusion in this historic case was identical in principle and consequence with that still receiving the sanction of Congress.

This whole body of cases has been despatched by Jeremy Bentham in these words: "Exclusion put upon all persons of this or that particular description *includes a license to commit*, in the presence of any number of persons of that description, *all imaginable crimes*."[2] The Psalmist exclaims: "I said in my haste all men are liars." But the malediction of the Psalmist in his haste is gravely adopted in this proscription, which undertakes to blast "all men" of a specified description as "liars." Assuming that all of a certain class or race or color cannot be believed on oath, it practically says, that, though present *in point of fact* at any crime, they are absent *in point of law*.

By the Mohammedan Law, no person could be convicted of adultery without the testimony of *four male witnesses*, — a requirement which was called by Gibbon "a law of domestic peace."[3] The extravagance of this requirement rendered it practically a law to prevent conviction, not unlike the law excluding testimony. It is a disguised exclusion. But of the two, the Moham-

[1] Pufendorf, Law of Nature and Nations, Book V. ch. 13, § 9.

[2] Rationale of Judicial Evidence, Book IX. ch. 3: Works (Edinburgh, 1843), Vol. VII. p. 339.

[3] History of the Decline and Fall of the Roman Empire, Ch. L.

medan Law is the least irrational. At all events, it does not assume the form of proscription.

The rule of exclusion, when founded on race or color, is something more than a rule of evidence from which justice may suffer. It is a proscription, which finds prototypes in other countries and times, kindred in character to the persecution of the Moors in Spain, and to that cruelty which for ages pursued the Jews everywhere, while it reveals that insensibility to the claims of a common humanity which has so slowly yielded to the demands of a just civilization. In France, during the last century, even after politeness had begun to prevail, it is recorded of a most intellectual lady, the commentator upon Newton, Madame du Châtelet, that she did not hesitate to undress before her male domestics, as it did not seem clear that such persons were men.[1] But it is in the irreligious system of Caste, as established in India, that we find the most perfect parallel. Indeed, the late Alexander von Humboldt, in speaking of colored persons, has designated them as a Caste;[2] and a political and juridical writer of France has used the same term to denote not only the distinctions in India, but those in our own country, which he characterizes as "humiliating and brutal."[3] But the Caste of India, by which the Brahmins and Sudras have been kept apart, is already repudiated by Christian civilization as "part and parcel of idolatry." Bishop Heber, of Calcutta, says of this injustice, it is "a system which tends more than anything else the Devil has yet invented to destroy the feelings of general benevolence, and to make nine tenths of mankind the hopeless slaves of the re-

[1] Tocqueville, L'Ancien Régime, Liv. III. ch. 5, (2me édit.,) p. 302.
[2] Essai Politique sur le Royaume de la Nouvelle-Espagne, Liv. II. ch. 6.
[3] Charles Comte, Traité de Législation, (2me édit.,) Tom. IV. pp. 129, 445.

mainder."[1] But the language with which this accomplished bishop condemns the heathen Caste of India is not inapplicable to that other Caste in our own country, which, in one of its incidents, despoils the colored person of his right to testify.

If we go back to the ancient Greeks, we find an interesting distinction. A slave was not believed on oath; so that one is recorded as exclaiming, in words which might be adopted in our day: "I know I am a slave: I don't know even what I do know."[2] But, though not believed on oath, his evidence was always taken with torture. On this account his testimony appears to have been considered of more value even than that of a freeman. Isæus, in arguing a case, said: "When slaves and freemen are at hand, you do not make use of the testimony of freemen; but, putting slaves to the torture, you thus endeavor to find out the truth of what has been done." Any person might offer his own slave to be examined by torture, or demand the same thing of his adversary, and the refusal of the latter was regarded as a strong presumption against him.[3] Thus cruelly did this sharp people seek to counteract the senseless rule of exclusion. Torture was recognized, but justice was not absolutely sacrificed.

The Romans seem to have borrowed the practice from the Greeks, or they were inspired to kindred cruelty. Not only slaves, but even free persons of an inferior condition, were seldom examined except under torture. Any person who wished the testimony of a slave might obtain it on giving sufficient security to the master for

[1] Journey through Upper India, (London, 1829,) Vol. III. p. 355.

[2] "Scio me esse servom: nescio etiam id quod scio." — PLAUTUS, *Bacchides*, Act. IV. Sc. vii. 21 [Ritschl, 791].

[3] Smith, Dict. Greek and Roman Antiq., art. SERVUS and TORMENTUM.

full reparation on account of damage from his torture. Mr. Jefferson states mildly our own practice, in contrast with that of Rome, when he says: "With the Romans, the regular method of taking the evidence of their slaves was under torture; here it has been thought better never to resort to their evidence."[1] In the latter days of the Empire, a general rule made the slave inadmissible as witness for or against his master or his master's children, except in cases of treason, where the danger of the crime overruled ordinary considerations, and also in cases of incest and adultery, for the good reason that *in a society where all domestics were slaves any other evidence could hardly be procured.*[2] But the latter reason might obviously exist in the case of any crime; so that, on principle, when other proofs were wanting, resort might be had to the testimony of slaves. Indeed, a learned commentator on the Roman Law has distinctly said that this law did not admit slaves to be witnesses, unless the cause was difficult, looking to the welfare of the republic, *or other proofs were wanting: "Servos lex civilis non patitur testes esse, ... nisi causa sit ardua, ad rei publicæ spectans utilitatem, aut aliæ desint probationes."*[3] It became customary, in civil matters, to admit the testimony of slaves as to their own acts, although affecting the interests of their masters; and after the establishment of Christianity, when heresy took its place as a crime to be dreaded as much as treason, the testimony of slaves was received equally with regard to each.

The rule of exclusion during the Dark Ages naturally

[1] Notes on Virginia, Query XIV.: Writings, Vol. VIII. p. 385.

[2] Blair, Inquiry into the State of Slavery amongst the Romans, pp. 62–64.

[3] Voet, Commentarius ad Pandectas, Lib. XXII. Tit. 5, sec. 2. See, also, Stephens, Slavery of the British West India Colonies, Vol. I. p. 171.

took its character from the prevailing darkness. The Barbarians did not, in this respect, soften the law of ancient Rome. Amidst the cares of empire this task was attempted by Charlemagne; but how little he accomplished may be seen in his Capitularies, where slaves are rejected as witnesses against their masters, except in cases of treason, and even freedmen, unless in the third generation, are not admitted to testify against freemen.[1] And the same intolerance is attributed to the Canon Law: "*Item placuit, ut omnes servi vel proprii liberti ad accusationem non admittantur.*"[2] But it appears that at this time, among some races, it was the prerogative of royal serfs, and of others not of base condition, to have their testimony received against freemen, especially in cases of childbirth, violence, or death by accident.[3] And the influence of the clergy seems to have overruled this exclusion in certain specified districts. Thus, in 1109, on the petition of the ecclesiastics of Paris, Louis the Sixth conceded to the serfs of the latter a perfect liberty of testifying and combating (*testificandi et bellandi*) against freemen as well as slaves; and this important concession was confirmed by the Pope, who declared, however, that there ought to be a difference in the conditions governing a family of the Church and the slaves of secular persons.[4] Although this concession was made for the sake of the Church rather than its humble dependants, it was an example by which the world became accustomed to receive the testimony of slaves.

[1] Capitularia Regum Francorum, ed. Baluzius, Lib. VI. cap. 352, Lib. VII. cap. 208.

[2] Potgiesser, De Statu Servorum, Lib. III. cap. 3, p. 612, note.

[3] Ibid., p. 611; Leg. Burgund., Tit. VI. § 3.

[4] Ibid., p. 612.

In England, under the Common Law, the rule of exclusion on account of Slavery was never fully recognized. The villein seems to have been admitted as a witness in all cases except against his lord. "I do not know," says Mr. Hallam, "that their testimony, except against their lord, was ever refused in England."[1] It was only in respect of his lord that he was without rights. But he was sometimes received, although the lord himself was a party;[2] and in criminal cases generally it was no exception to a witness that he was a bondman.[3] Such, even at the beginning, was the voice of the Common Law. But with the disappearance of villenage all pretence of exclusion on this account vanished in England, never to return.

The offensive rule seems to have found less acceptance in the possessions of other countries than with us. It has been inferred, after careful inquiry, that slaves in the Spanish and Portuguese settlements are not always incompetent as witnesses, while the *Code Noir* of Louis the Fourteenth, amidst ungenerous prohibitions, allowed their evidence to be heard, "as a suggestion, or unauthenticated information, which might throw light on the evidence of other witnesses," and afterwards, by later edict, sanctioned the testimony of slaves, "when white witnesses were wanting, except against their masters."[4] But the rule is the natural complement of Slavery; and it cannot be disguised that it has prevailed, with corresponding degrees of force, wherever

[1] Europe during the Middle Ages (London, 1846), Ch. II. Part 2, Vol. I. p. 149, note.

[2] Coke upon Littleton, 122 b.; Brooke's Abridgment, *Villenage*, 68; Fitzherbert's Abridgment, *Villenage*, 38, 39.

[3] Hawkins, Pleas of the Crown, (7th edit.,) Book II. ch. 46, § 162 [45].

[4] Stephens, Slavery in the British West India Colonies, Vol. I. pp. 174, 175.

Slavery has been recognized. Its prevalence with us is only another illustration of the power of Slavery.

If you would find the country where slaves have been most completely despoiled of the right of testimony, you will not go to Greece or Rome, for in these classic lands the slaves were admitted to testify in certain cases; nor will you linger even in the Dark Ages, for there were then excepted cases; nor will you search English precedents, for the villein was incompetent only against his lord, and not always against him; nor will you look to the colonies of Spain, Portugal, or France, for in all of these the cruel rule was mitigated; but you will turn to those States of our Republic where the slave is not permitted to testify against his master or any other white person, and where even free colored persons, having no master, are smitten with the same incapacity to testify against any white person.

GROUNDS FOR THIS INJUSTICE.

FROM examples of history the way is easy to an inquiry into the grounds on which this proscription is founded.

The true reason may be traced to the unhappy prejudices engendered by Slavery, and to the policy of sustaining this wrong. Indeed, it is hardly less essential to Slavery than the lash itself. An early statute of Virginia places the rule on the ground that none but Christians should be witnesses, and even among these "Popish recusants convict" were inadmissible.[1] But it is generally vindicated by dwelling on *the degraded condition of the slave, and the interest he may have to*

[1] Act 1705, § 31: 3 Hening, Statutes at Large, 298.

conceal or deny the truth.[1] A careful examination will show that this apology is baseless as Slavery itself.

Of course, if a witness is too degraded to feel the sanction of an oath, his testimony should not be received. Such is the unquestionable suggestion of reason; nor can it make any difference that the witness is white or black. But the slave is not necessarily and universally so degraded as to merit exclusion, nor is his interest to conceal or deny the truth different materially from that of other persons, — although it is undoubtedly true, that, under the instinct of self-defence, and against the exactions of Slavery, he learns to deceive. But in every State except South Carolina *the oath of the slave is received against colored persons,* which could not be done, if he could not be trusted under oath. A judge of South Carolina has vindicated the capacity of the slave in this respect, and thus unintentionally repelled the rule of exclusion. "Negroes, slaves or free," says Judge O'Neall, "will feel the sanction of an oath with as much force as any of the ignorant classes of white people in a Christian country. They ought, too, to be made to know, if they testify falsely, they are to be punished for it by human laws. The course pursued on the trial of negroes, in the abduction and obtaining testimony, leads to none of the certainties of truth. Falsehood is often the result, and innocence is thus often sacrificed on the shrine of prejudice."[2] But this learned judge of South Carolina is not alone in vindicating the propriety of examining the slave on oath. Judge Clayton, of the High Court of Errors and Appeals in Mississippi, in de-

[1] Wheeler, Law of Slavery, p. 194, note.

[2] De Bow, Industrial Resources, &c., of the Southern and Western States, Vol. II. p. 274.

livering the opinion of the Court, thus expressed himself: "It is also objected, that there ought, in the case of slaves, to be some evidence of a sense of religious accountability, upon which the validity of all testimony rests, and that the same presumption of such religious belief cannot be indulged in reference to them as in regard to white persons. As to the latter, it is said the presumption is in favor of their proper religious culture and belief in revelation and a future state of rewards and punishments; as to slaves, it is contended the presumption does not arise, because of a defect of religious education. It is true, that, if the declarant had no sense of future responsibility, his declarations would not be admissible. But the absence of such belief must be shown. The simple elementary truths of Christianity, the immortality of the soul and a future accountability, are generally received and believed by this portion of our population. From the pulpit many, perhaps all, who attain maturity, hear these doctrines announced and enforced, and embrace them as articles of faith."[1]

But if slaves generally have a sufficient amount of religious belief to supply the sanction of an oath, it is clear that they are not so degraded as to justify their exclusion as sworn witnesses. And the Slave States, while excluding them, have practically recognized their fitness. Not only is the oath of a slave received in all the Slave States except South Carolina, but he is liable to punishment for perjury,[2] and sometimes the punish-

[1] Lewis v. The State, 9 Smedes and Marshall, R., 120.

[2] See Rev. Code Del., Ch. 80, § 28, Ch. 130, § 1; 1 Dorsey, Laws Md., 92, 777; Code Va., Ch. 194, § 1, Ch. 200, § 8; Rev. Stat. Ky., Ch. 93, art. 7, §§ 14, 15; Rev. Stat. N. C., Ch. 111, § 52; Car. and Nich., Comp. Tenn., 674; Thompson, Dig. Fa., 540, § 11; Cobb, Dig. Ga., 974, § 19, 987, § 63; Code Ala., §§ 3315, 3318; Hutchinson, Code Miss., 521, § 59.

ment inflicted is diabolic. In Virginia,[1] and also in Maryland,[2] the punishment formerly was "cropping." In Florida, the statute appoints that the offender "shall have his or her ears nailed to posts, and there to stand for one hour, and, moreover, receive thirty-nine lashes on his or *her bare back*."[3] In Mississippi, if a colored person is found to have given false testimony, he is "to have one ear nailed to the pillory, and there to stand for the space of one hour, and then the said ear to be cut off, and thereafter the other ear nailed in like manner, and cut off at the expiration of one other hour; and, moreover, to receive thirty-nine lashes on his or *her bare back*, well laid on, at the public whipping-post, or such other punishment as the court shall think proper, not extending to life or limb."[4] But every recognition of the oath of a slave on any occasion, and especially every punishment of a slave for perjury, testifies to his capacity as a witness. The barbarism of the punishment testifies also against Slavery. It is vain to say that a slave is incompetent, when, in certain cases, he is already accepted as witness, and visited with fiendish punishment, if he violates his oath.

The absurdity of this pretension is illustrated by a provision in the statutes of Kentucky, by which a slave in the penitentiary may be a competent witness against a white convict.[5] Such was early the law of Virginia, and even now he is competent for the white convict. Thus, so long as a slave commits no crime, his oath is not received in court to affect a white person even with

[1] Tate, Dig., 338, § 3.
[2] 1 Dorsey, 92.
[3] Act of 1828, § 41: Thompson's Digest, 540, § 11.
[4] Act of 1822, June 18, § 59.
[5] Rev. Stat., Ch. 74, art. 3, § 8.

the smallest pecuniary liability; but let him be sent to the penitentiary as a convict for crime, and forthwith his capacity as a witness is enlarged, and on his testimony a white convict may be deprived of life! But, obviously, the commission of a crime carrying with it the doom of the penitentiary must impair rather than increase confidence in the veracity of the criminal. Such is the absurd inconsistency in the application of this rule.

Although the rule may be properly traced to Slavery, of which it is an important ally, yet, from considerations already presented, it seems to follow that it is founded on a reason broader than Slavery, suggested, however, by Slavery. According to the logic of these considerations, the disqualification of the slave as a witness against white persons is not founded on the fact that he is a slave, because the disqualification, except in Delaware and Louisiana, attaches also to free colored persons; nor is it founded on want of that religious belief required in a sworn witness, nor on any actual disregard of his testimony under oath, because the slave in certain cases is sworn, and his testimony under oath is accepted in the administration of justice, and he is punished for perjury; but it is simply, in the last analysis, *an incapacity attached by law to persons of color.* Indeed, the obvious inference from the remarks of Judge O'Neall[1] is, that, in his opinion, it is not slavery, but color, which is the ground of exclusion. But the Committee have already shown the pernicious consequences of such proscription, and especially that the disfranchisement of the African race operates as a liberty to all white persons, not excepting, in most of the States, even white convicts, to do as they please, and commit any crime in

[1] De Bow, Industrial Resources, Vol. II. p. 274.

the Decalogue, "unwhipped of justice," if nobody but a colored person is present. It needs no argument to establish the unreasonableness of a disqualification which, according to the confession of its advocates, attaches to the shading of the human skin, especially in view of the fearful cruelty that is its natural consequence.

In Delaware and Louisiana the disqualification rests on the fact of Slavery. In many other States the free colored persons are so few in number that the fact of Slavery seems still to overshadow the whole race. Assuming, then, that the disqualification is traced not merely to the shading of the skin, but to the fact of Slavery, it is none the less to be rejected, not only as part of Slavery, but as essentially irrational and inhuman.

The slave feels the sanction of an oath hardly less than many white persons of inferior condition. On grounds of reason, therefore, and independently of prejudice, the two classes at the outset would be entitled to an equal degree of confidence, — modified, of course, and decreasing, as there was a manifest interest or temptation to testify falsely. But the slave is exposed to such corrupting power less than a white person. He can have no pecuniary interest, since he has no right of property. And, except where his master is a party or otherwise interested, he must be alike without hope of gain or fear of punishment to make him swerve from the truth. Accordingly, in all cases where his master stands indifferent, the reason for excluding the slave is not so strong as for excluding white persons of inferior condition, since the slave may feel the sanction of an oath as much as they, while he is less exposed to any disturbing influence. Such, certainly, is the conclusion justified by the facts.

The dependence of the slave upon his master must naturally subject him peculiarly to his influence, whether from hope of reward or fear of punishment; so that his testimony in favor of his master would always be viewed with suspicion. If, contrary to this active interest, the slave testifies *against* his master, his testimony would seem to be worthy of peculiar consideration. But even where he testifies *for* his master, there can be no more reason for excluding his testimony than for excluding that of a child for a father or a mother, or of excluding that of a father or a mother for a child. Unquestionably, in each of these cases the bias is stronger than any that can exist on the part of a slave, as love is stronger than fear. Therefore there is no valid reason why a slave should not be permitted to testify *for* or *against* his master. The same considerations which determine the value of other testimony will suffice with regard to him; and thus, in every respect, the rule of exclusion becomes irrational and arbitrary.

But this rule, whether applicable to slaves or free colored persons, is still more irrational and unwarranted when it is considered that the testimony is submitted to the scrutiny of a jury of white persons, under the watchful observation of a court of white persons likewise, and that it can have no effect whatever except through assent of their judgment. The motive which actuates the slave, whatever it may be, whether revenge or interest or fear, must be open to discovery. It is therefore preposterous to argue that any white person, at any time or anywhere, especially in a Slave State, can be prejudiced by colored testimony, or that he can be convicted by a white jury under the eye of a white court, unless that testimony is strictly worthy of belief. The rule of

exclusion is not only an expression of tyranny and prejudice, but an insult to the understanding, and even to common sense.

If this rule were only irrational and eccentric, it might be pardoned to immeasurable madness, and handed over to the derision of mankind. But even its absurdity disappears in its appalling injustice. Two things are obvious to the most superficial observation: first, that under its influence the slave is left absolutely without legal protection of any kind, the victim of lawless outrage; and, secondly, that even crimes against white persons may escape unpunished: so that in these two important cases justice must fail. But this failure of justice becomes intolerable, when it is considered that it is not from accident or temporary weakness, but that it is absolutely organized by law. Nor is it confined to slaves. It embraces in its ban free colored persons also, without regard to intelligence, property, or relations in life.

CONCLUSION.

SUCH is this proscription, as it appears (1.) in the various statutes of the Slave States, (2.) in the eccentricities of judicial decisions, (3.) in its consequences, (4.) in examples of history, and (5.) in the grounds on which it is founded. Regarding it in either of these aspects, it must be rejected. The statutes in which it is declared and the judicial eccentricities by which it is illustrated belong to the curiosities of an expiring barbarism. Its consequences shock the conscience of the world. The examples of history testify against it. The reason on which it is founded shows that it stands on nothing that is reasonable.

It is for Congress to determine whether this proscription shall continue in the courts of the United States, — or, in other words, if a local rule, barbarous, irrational, and unjust, born of Slavery, shall be allowed to exist yet longer under the national sanction.

THE MISSION TO BELGIUM.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC APPROPRIATION BILL, MARCH 15, 1864.

MARCH 14th, the Senate having under consideration the bill making appropriations for the consular and diplomatic service, Mr. Sumner, in behalf of the Committee on Foreign Relations, moved the following amendment: —

"That the President may, in his discretion, by and with the advice and consent of the Senate, appoint an envoy extraordinary and minister plenipotentiary to the kingdom of Belgium, who shall receive no higher compensation than is now allowed to a minister resident."

The amendment was opposed by Mr. Fessenden, of Maine, to whom Mr. Sumner replied.[1]

March 15th, the debate was continued, and Mr. Sumner spoke several times. In reply to Mr. Davis, of Kentucky, he said: —

MR. PRESIDENT, — There seems a perpetual disposition in this debate to change the issue. I stated that the issue was how we shall best give efficiency to our representation in Europe. Now the Senator from Kentucky says that the issue is how we shall give our minister at Belgium an opportunity to get into a little better company. That is his imagination. Surely it is not the way the Committee directed me to state the case. It is not the way in which I have presented it at any time in this discussion. I hope that Senators will

[1] Congressional Globe, 38th Cong. 1st Sess., pp. 1094-1096.

not be diverted from the real issue, which is simply, Will the public interests be promoted by this change? The Committee answer in the affirmative, and in my humble opinion the Committee is right.

MR. DAVIS. Will the Chairman specify in what respect the public interest will be promoted, in what respect the efficiency of our representative at the court of Brussels will be increased, and in what respect the increase of his grade will render this Government and its interests more acceptable to Leopold?

MR. SUMNER. In the same way, Sir, that the public interests are promoted at London, and also at Paris, by a plenipotentiary instead of a minister resident.

MR. DAVIS. According to that rule, we ought to have a first-class minister at every court in Europe and at every government in South America, and everywhere else where we send diplomatic representatives.

MR. SUMNER. No, — the Senator will pardon me, — not at every court in Europe, but only at those where we have considerable interests. It all pivots upon that. What are our relations with different courts? With considerable interests, we should be represented accordingly. With inconsiderable interests only, there is no reason to raise the mission. We have first-class missions, according to our scale of rank, at London, Paris, Madrid, Turin, Vienna, Berlin, and St. Petersburg. And why?

MR. DAVIS. Will the honorable Chairman tell me the relative proportion between the commercial interests of the United States and England, the United States and France, and the United States and Belgium?

MR. SUMNER. There are interests of all kinds, commercial and political, differing in different countries. I need not remind the Senator that our interests with England and France are largely superior to those with any other European power,

— much above those with Belgium ; but if you ask me what other European power I should place next after those two, I should hesitate, in the condition of our affairs at this precise moment, to place any before Belgium.

MR. DAVIS. Would you not place Russia before Belgium ?

MR. SUMNER. I would not exaggerate, but I am obliged to acknowledge, in reply to the Senator, that I should hesitate at this moment to say that even Russia was so situated as to make our minister there so important to our present interests as our minister at Belgium. In one word, our minister at Brussels has more to do than our minister at St. Petersburg. Look I pray you, at the geographical position of Belgium, its thronging, active population, its commerce, its manufactures. But countries derive character and even power from their rulers, and this is the happy advantage of Belgium, especially in her relations with us. You all know that her sovereign is able to exercise a persuasive influence over international affairs, entirely out of proportion to the extent of territory he so wisely governs, and this influence has been exerted at a critical moment in our favor.

I would not say a word in disparagement of any other power. But it would be difficult, after England and France, to name any power which, all things considered, furnishes at this moment such opportunites of usefulness in the public service to any American plenipotentiary as are afforded by Belgium. Would the Senator compare our interests there with those in Prussia, one of the most respectable and highly educated courts of the globe, or with Austria, great in military power and physical resources ? At Berlin and Vienna there is less for our ministers to do, and less of opportunity, than at

Brussels. The geographical position of these capitals explains this difference, at least in part.

Or, if you please, take the government of Spain, representing that great Castilian monarchy on which it was said that the sun never set. A Senator whispers that this was said some time ago. True; but you have in Spain the old Castilian pride and faith born of that immense empire; and yet our interests with Spain at this moment, or, in other words, our opportunities in that kingdom, are not more important than in the smaller kingdom of Belgium, which the sun covers in much less than a single hour.

Then there is the new-born kingdom of Italy, where we have also a plenipotentiary. Does any one suppose, that, if you put aside that sympathy which every American feels for this interesting power, newly dedicated to Liberty, our interests there at this moment are equal to those with Belgium? Here again geography explains the difference.

There only remains in this review, to which the Senator invites me, the empire of Russia, bound by many years of history to amity with the United States, and absolutely fixed as our friend beyond any jar of diplomacy or any jealousy of growing power. But our commercial relations with this extensive country are inferior to those with Belgium; and St. Petersburg is further removed from the great centre of observation than Brussels. The Emperor of Russia is illustrious from a transcendent act, for which his name will be blessed; but his assured regard for us takes away all solicitude as to his policy, while the complications of present questions in which he is involved render his relations to other European governments less intimate than those of King

Leopold, even if the latter had not, from family and long experience, a position of peculiar weight in the scale of European affairs, so that Belgium under his rule has a value beyond her natural power or territorial extent. Belgium may be small in domain, but so was Greece; nor will any one presume to measure the influence her sovereign may exercise by the number of square miles he governs.

But the Senator asked if there was any other government so small in numbers where we were represented by a plenipotentiary. I have before me, from the last almanac, the population of Chile, where we have a plenipotentiary. It is one million five hundred and fifty-eight thousand. Here, also, is the population of Peru, where we have a plenipotentiary, — two million five hundred thousand.

MR. DAVIS. I believe that those missions ought to be reduced, and I would vote to-day for the reduction of the missions to Chile and to Peru.

MR. SUMNER. Very well; but let us take each question by itself. That is the more practical way. When the proposition to reduce the missions to Chile and Peru comes before the Senate, I shall be ready to meet it, and I do not say that I shall differ from the Senator; but that proposition is not now before us, nor is it involved even indirectly in the pending amendment.

It is said, that, if we raise this mission, next year there will be attempt to raise the salary. Very well; when that comes, we can meet it. Again it is said that next year there will be attempt to raise both mission and salary at the Hague and other places. Very well; when the time comes, — and it must have the sanction of a

committee of this body to come before the Senate, — we will meet it. Meanwhile I ask you to consider the actual question under debate, which is, whether you will authorize the Government, in view of the peculiar circumstances of the case and for the support of our interests abroad, to raise the Belgian mission without any increase of salary. I have said this too often, I know; but I have been driven to it by the pertinacity with which Senators have insisted upon presenting the case in a false light.

The amendment was adopted, — Yeas 21, Nays 18, — and the bill passed the Senate; but the House of Representatives would not consent to raise the Belgian mission. Two different conference committees were appointed. The first united in the following substitute, drawn by Mr. Sumner, which would enable the President to raise the mission in his discretion without increase of salary: "That an envoy extraordinary and minister plenipotentiary, appointed at any place where the United States are now represented by a minister resident, shall receive the compensation fixed by law and appropriated for a minister resident, and no more." But this was disagreed to by the House, and at the second conference the Senate receded from the amendment, so that it was lost.

In the next Congress it was renewed by Mr. Sumner, and prevailed. It will be found in the Consular and Diplomatic Act of July 25, 1866.[1]

[1] Statutes at Large, Vol. XIV. p. 226.

CONSULAR PUPILS.

SPEECH IN THE SENATE, ON AN AMENDMENT TO THE CONSULAR AND DIPLOMATIC APPROPRIATION BILL, MARCH 15, 1864.

THE Senate having under consideration the Consular and Diplomatic Appropriation Bill, an amendment was reported by Mr. Fessenden from the Committee on Finance reviving the provision in the Act of August 18, 1856,[1] authorizing twenty-five consular pupils, and making an appropriation for them. The amendment was opposed by Mr. Collamer, of Vermont, and Mr. Reverdy Johnson, of Maryland. Mr. Sumner said in reply: —

MR. PRESIDENT, — The chief objection of the Senator from Maryland seemed to be that we might educate these young men at the national expense and very soon thereafter lose them, — in other words, not get our money back. In the first place, it is very easy, by regulations at the State Department before these appointments, to provide against any such contingency; and I understand that Mr. Marcy, indefatigable and ingenious as the Senator remembers he was, did, by a series of regulations, carefully provide for this very case. Should we return to the original law, the Secretary of State would have only to revive those original regulations by one of his most distinguished predecessors. I believe this a sufficient answer to the Senator.

But the Senator from Michigan [Mr. CHANDLER] has

[1] Statutes at Large, Vol. XI. p. 55, Ch 127, § 7.

already answered him in another way, when he asked, very pertinently, What assurance have we that we shall enjoy the services of the cadets at West Point, or the naval cadets now at Newport? There are certain requirements of service, but the Senator knows well that nothing is more common than for cadets, especially military, to pass immediately from that education they have received at the expense of their country into occupations serving only their private advantage.

MR. JOHNSON. That is with the consent of the Government. The Government accepts their resignations.

MR. SUMNER. Very well; what is to hinder regulations at the Department of State requiring the consent of the Government before these pupils shall be released, — in short, holding them by some words of contract for a certain term? Here let me say, that, unlike cadets, these pupils will give the Government valuable service even while pupils.

But, Sir, passing from these considerations, allow me for a moment to ask the attention of the Senate to this proposition in two aspects, — the first as a carrying out of the consular and diplomatic statute of the United States, and the second as in the nature of an educational provision calculated to benefit our consular service abroad.

In the first aspect, the Senate will bear in mind that down to 1855 we had no general diplomatic and consular statute. Our representation in foreign countries went under thorough review, and the result was the statute in our books, determining grades, adjusting salaries, and, in one word, systematizing the whole business. Let the character of the statute be borne in mind. But

this statute, which aimed to present a complete system, contained the provision for consular pupils.

Now, Sir, at that time and by that statute our consular salaries were adjusted to this very provision of consular pupils. The one was in the nature of a complement to the other. The salaries were made lower than they otherwise would have been in certain cases, because the consuls were to be aided by pupils with a compensation fixed by statute. But the provision for pupils was repealed shortly afterwards, indeed before the experiment had been tried, without, however, raising the consular salaries in corresponding degree. It seems clear that something must be done now. You must do one of two things, — either raise the consular salaries or appoint consular pupils. Otherwise the original idea of the statute fails, and our system is defective.

But this seems to be the least important aspect of the subject. A mere question of salary, or, if you please, of system in the statute, is trivial, to my mind, by the side of that other consideration to which Senators have already alluded. I said that this was part of an educational system for the advancement of our service abroad. I do not think you can exaggerate its importance in this respect. Let any one who has been abroad, or had personal acquaintance with those who have been abroad, bear testimony to the abounding ignorance in our foreign service, from the circumstance that there is nobody there, unless a hired foreigner, acquainted with the language, the laws, or the usages of the people about him. Sir, it is a shame that our offices abroad, whether consular or diplomatic, are served in this inferior way. Here, now, is a practical proposition beginning a remedy. It

is simple and direct. It seems to me that it cannot fail to be of considerable advantage. The business of these offices will be better done, and there will be a staff of educated experts, familiar with foreign life, whose knowledge and experience, even if not always in the service of Government, will pass into the capital stock and resources of the country. Nothing is clearer than that the education of the people is a source of national wealth, even of national power.

But the Senator from Vermont says that education is needed more in the diplomatic service than in the consular. Granted; it is needed very much in the diplomatic service; but because needed there, is that any reason why we should not supply it here? The argument, it seems to me, was hardly worthy of that Senator. Let a proposition be brought forward for an educational system applicable to our diplomatic representatives, and we will entertain it. Meanwhile let us act on that before us, which, I submit, is eminently practical in character. Who are our consuls? They are not diplomatic or political agents in the common sense of the term; they are commercial agents. To discharge their duties fitly, they should be familiar with the interests of commerce, how it is conducted, and the language it employs, where they happen to be. And permit me to say, that a great country like ours, one of whose chief sources of wealth and of grandeur is commerce, must not hesitate to supply the education needed to secure commercial representatives not unworthy of the Republic they represent.

As the consul is a commercial representative, he is on this account especially the agent of a commercial country. If our commerce were less, our interest in having

good consuls would be less. But with the surpassing growth of our commerce this interest enlarges. To send abroad consuls without proper education must necessarily bring the national character into disrepute, and jeopard the concerns intrusted to them. For the sake of our good name abroad, which is part of our national possessions, and also for the sake of those vast commercial concerns which encircle the globe, I hope that this proposition, which is a small beginning in the right direction, will not be rejected.

March 16th, the debate was continued, and Mr. Sumner spoke again. The amendment was adopted, — Yeas 20, Nays 16, — and the bill passed the Senate. The House disagreed to the amendment, but afterwards accepted the report of a conference committee, authorizing the appointment of "consular clerks, not exceeding thirteen in number at any one time, who shall be citizens of the United States, and over eighteen years of age at the time of their appointment, and shall be entitled to compensation for their services respectively at a rate not exceeding one thousand dollars per annum, to be determined by the President."[1]

[1] Statutes at Large, Vol. XIII. p. 189.

THE LATE HON. OWEN LOVEJOY, OF THE HOUSE OF REPRESENTATIVES.

SPEECH IN THE SENATE, ON THE RESOLUTIONS UPON HIS DEATH, MARCH 29, 1864.

MR. PRESIDENT, — It is proposed to adjourn in honor of OWEN LOVEJOY, whose recent death we mourn. Could his wishes prevail, Senators would continue in their seats and help enact into law some one of the several measures pending to secure the obliteration of Slavery. Such an act would be more acceptable to him than any personal tribute.

He spoke well always, but he believed in deeds rather than words, although speech with him was a deed. It was his contribution to that sublime cause for which he toiled always. Words may be often "the daughters of earth," but there was little of earth in his. Proceeding from a pure and generous heart, they have so far prevailed, even during his life, that they must be named gratefully among those good influences by which the triumph has been won. How his enfranchised soul would be elevated, even in those abodes to which he is removed, at knowing that his voice is still heard on earth, encouraging, exhorting, insisting that there shall be no hesitation anywhere in striking at Slavery, — that this unpardonable wrong, from which alone the Rebellion draws its wicked life, must be blasted by Presidential

proclamation, blasted by Act of Congress, blasted by constitutional prohibition, blasted in every possible way, by every available agency, and at every occurring opportunity, so that no trace of the outrage may continue in the institutions of the land, and especially that its accursed footprints may no longer defile the national statute-book! In vain you pass resolutions in tribute to him, if you neglect that cause for which he lived, and hearken not to his voice.

Shortly before he went away from Washington to die, I sat by his bedside. There, too, within call, was the beloved partner of his life. He was cheerful; but his thoughts were mainly turned to his country, whose fortunes in the bloody conflict with Slavery he watched with intensest care. He did not doubt the great result; but he longed to be at his post again, to teach his fellow-citizens, and to teach Congress, how vain to expect an end of the Rebellion without making an end of Slavery. It is only just to his fame that now, on this occasion of commemoration, all this should be faithfully told. To suppress it would be dishonest. I could not speak at his funeral, if I were expected to unite in robbing his grave of any of these honors derived from his transcendent courage and discernment in the trials of the present hour.

The Journals of the House show how faithfully he began his labors at the present session. On the 14th of December he introduced a bill, whose title discloses its character: "A bill to give effect to the Declaration of Independence, and also to certain provisions of the Constitution of the United States." It proceeds to recite that all men are created equal, and endowed by the Creator with the inalienable right to life, liberty, and the

fruits of honest toil; that the Government of the United States was instituted to secure those rights; that the Constitution declares that no person shall be deprived of liberty without due process of law, and also provides (Article six, clause two) that "this Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding"; that it is now demonstrated by the Rebellion that Slavery is absolutely incompatible with the union, peace, and general welfare for which Congress is to provide; and it therefore enacts that all persons heretofore held in slavery in any of the States or Territories of the United States are declared freedmen, and are forever released from slavery or involuntary servitude, except as punishment for crime on due conviction. On the same day he introduced another bill, to protect freedmen and to punish any one for enslaving them. These were among his last public acts. And now they testify how honestly he dealt with that *question of questions* in which all other questions are swallowed up. It is easy to see that he scorned the wicked fantasy that man can hold property in man. This pernicious delusion, which is the source of such intolerable pretensions on the part of slave-masters, and, worse still, of such intolerable irresolution on the part of many professing opposition to Slavery, could get no hold of him. He knew that it was a preposterous falsehood, as wicked as false, born of prejudice and supreme credulity, and therefore he brushed aside as cobweb all the fine-spun snares of law or Constitution so ingeniously woven in its support. Recognizing Freedom as the God-given birthright

of all who wear the human form, he knew no duty higher than to protect it always; and to this end law and Constitution must minister.

He had never been a judge, and was not even a lawyer, so that the technicalities and subtilties of the profession had no chance of enslaving him. Besides, to a nature like his, independent and self-poised, what were the sophisms of learning and skill, when employed in the support of Wrong? It was enough, that, wherever Slavery appeared, it was in defiance of that commanding law of Right, before which all unjust pretensions, whatever form they take, must disappear like the morning dew under the flashing arrows of the ascending sun. From the beginning and at all times he was fixed against all compromise with Slavery, and stood like a fortress. Sir, let it be spoken here in his honor. He lies cold in death, but he could have no better epitaph than this: "*Here rests one who would not compromise with Wrong.*" When Senators and Presidents bent to the ignoble behest, he stood firm. He was gifted to see that Slavery, unlike Tariff or Bank, did not come within the range of compromise any more than the Decalogue or Multiplication Table. He saw well how shamefully unconstitutional and inhuman was the Fugitive Slave Act, in spite of every apology of compromise, and refused it all support. He lies cold in death, but his principles will live to sweep this unutterable atrocity from the statute-book, which it still fills from cover to cover with blackness.

He was not only a faithful counsellor of perfect loyalty, in whom truth was a religion and an instinct, but he was a counsellor whose experience of mankind and of public life united with aptitude for affairs in giving

to what he said added value. He sat for several years in the other House face to face with Slave-Masters, who then ruled the country, so that he knew them well in every respect, but especially in their open brutality and surpassing effrontery. During this period, while shut out from participation in the public business, his duty was that of champion, and nobly did he perform it. But those who watched him under the responsibility recently cast upon a Representative of his character observed that he developed a practical talent which rendered him useful, not only as champion, but also as workman in the machine of government. He was a supporter of the present Administration, and of that declared policy which, according to the motto of Algernon Sidney, adopted on the arms of Massachusetts, seeks "placid quiet under Liberty,"—*placidam sub Libertate quietem.* There are few among his associates who may not be instructed and inspired by his magnanimous example.

He had been a lifelong soldier of Liberty, baptized into a service of blood. While yet young, his brother, an editor in Illinois, devoted to the slave, fell a victim to the cause he served so well. His fate awakened a wide sympathy throughout the country, drawing Channing from his retirement to speak at Faneuil Hall, and touching with a living coal the lips of Wendell Phillips, whose voice then and there, for the first time, flamed forth against Slavery. It was natural that Owen Lovejoy should assume those vows of perpetual warfare with the tyrant murderer which he so truly kept, — tyrant murderer of a cherished brother, — tyrant murderer of Liberty, not only on the plantation, but everywhere throughout the land, — tyrant murderer

of the Constitution, which guards alike the rights of States and citizens, — and tyrant murderer of national peace, without which there can be no true prosperity or happiness. Thus, as a soldier of Liberty, he began, and he kept his harness on to the last.

He was one of the most amiable of men, whose heart was abundant with goodness and gentleness, and whose countenance streamed with sunshine. But on this account he was only the more inexorable toward a wrong so cruel in all its influences. A child of the New Testament, he was no stranger to the early Hebrew spirit, and had little patience with those who, born among Northern schools and churches, strove to arrest or mitigate the doom of Slavery. The famous curse of Meroz, so solemnly denounced against neutrality, which had been echoed from ancient Judea by English Puritans in their great contest, found an echo in his heart: "Curse ye Meroz, said the angel of the Lord, curse ye bitterly the inhabitants thereof, because they came not to the help of the Lord, to the help of the Lord against the mighty."[1] Of course, in this spirit he used plain words, and did not hesitate. But if he did not hesitate, it was because he saw clearly the path of duty. Amiability did not make him doubt. He was a positive man, of positive principles, who knew well how much was always lost by timid counsels, especially on great occasions. Because there were some about him who were skeptical and irresolute, he was not disheartened, but preserved to the last an example of fidelity which history will piously enshrine. His own illustrations were from the sacred writings, but a heathen poet has given a warning which is part of the lesson of his life: —

[1] Judges, v. 23.

> "Old Priam's age, or Nestor's, may be out,
> And thou, O Taurus, still go on in doubt.
> Come, then, how long such wavering shall we see?
> Thou mayst doubt on; but then thou 'lt nothing be." [1]

Of all doubts, there are none more painful or indefensible than those by which human rights are put in jeopardy.

He was a Representative of Illinois, born in Maine when Maine was part of Massachusetts, which made him a connecting link between the East and the West. The welcome he found in the West, and his complete fellowship with that region, while his sympathies overflowed to his early home, attest better than arguments the ligatures binding together these different parts of our common Union; so that, hereafter, should any malignant spirit seek to sow strife between us, his name alone will be a standing protest against the alienation. Born in the East, he was honored in the West. Honored in the West, he never lost his love for the East. But the whole country, not excepting the South, had a home in his patriotic, hospitable, and capacious heart. He hated Slavery; but he loved his country in every part, with heart, soul, and mind.

He was of the Old Guard of Antislavery, and we bury him with the honors that belong to such a soldier. Flags are at half-mast, and funeral guns are sounding in our hearts. But from his new-made grave he speaks now to the whole vast Republic, animating all good citizens to labor as he labored and to live as he lived, that this land may be redeemed. Especially does he speak to the State that honored him in life, and to those associate States constituting the mighty Northwest, where he

[1] Martial, Epigr., Lib. II. 64.

found the home of his mature years, — Indiana, Michigan, Wisconsin, Iowa, Minnesota, — exhorting them to take up bravely and without faltering the cause he made his own, that it may not lose by his death. But, alas! the vigilance of many will be needed to supply the place he filled.

Such a character must be mourned in Congress; but he will be mourned throughout the country, at all those virtuous firesides where fathers, mothers, brothers, and sisters speak of those who have helped human happiness on earth. And there is another company, who cannot yet pronounce his name, but, as they hear how truly he was their friend, will rise to call him blessed. Already, unseen of men, in vast uncounted procession, the slaves of the Union help to swell his funeral.

COLORED SUFFRAGE IN THE TERRITORY OF MONTANA.

SPEECHES IN THE SENATE, ON AN AMENDMENT TO THE BILL FOR A TEMPORARY GOVERNMENT OF THAT TERRITORY, MARCH 31 AND MAY 19, 1864.

MARCH 30th, the Senate having under consideration a bill, that had already passed the House of Representatives, to provide a temporary government for the Territory of Montana, Mr. Wilkinson, of Minnesota, moved to amend the clause relating to persons entitled to vote and eligible to office, so that, instead of "every *white male inhabitant*," it should read "every *free male citizen* of the United States, and those who have declared their intention to become such." Mr. Reverdy Johnson at once declared that "the effect of the amendment was to admit to the elective franchise in the proposed Territory black men as well as white," and, after mentioning the number of Africans now in the United States, he proceeded to say that "it can hardly be seriously contended, that, of that four millions, such portion of them as have been in a state of slavery from infancy to the present time are intelligent enough, or likely to become intelligent enough, at once to exercise the right of suffrage"; and he anticipated another question, "just as likely to excite the public as the question of the existence of Slavery in itself."

March 31st, the amendment was adopted, — Yeas 22, Nays 17. The debate continuing, Mr. Johnson said that the term "citizen" was not applicable to "black men," "because the Supreme Court of the United States has decided, and that question was directly before the Court in the Dred Scott case, that a person of African descent is not a citizen of the United States." Mr. Wilkinson was willing it should stand according to his amendment, and let the decision of the Supreme Court be whatever it might. He wanted neither "white" nor "black" put into the bill. Mr. Sumner then remarked :—

"I take it that each branch of the Government can interpret the Constitution for itself. I think that Congress is as good an authority in its interpretation as the Supreme Court, and I hope that in legislation it will proceed

absolutely without respect to a decision which has disgraced the country, and ought to be expelled from its jurisprudence."

Mr. Johnson vindicated the Dred Scott decision at length, and made an elaborate eulogy of Chief Justice Taney. In the course of his remarks, he said: "There are many men, the equals of the honorable Senator, to say the least, intellectually, who think that that decision was anything but an outrage. . . . . We have an interest, jurisprudence has an interest, justice has an interest, the nation has an interest, in maintaining the character of that tribunal against all unjust reproach. It is no light thing to pronounce a decision given by such a tribunal as that as a disgrace. . . . . I cannot, therefore, stand still and hear a tribunal like that assailed, as I think unnecessarily, by anybody, and particularly by the honorable member from Massachusetts."

Mr. Sumner replied: —

MR. PRESIDENT, — The multiplication table tells us that two and two make four. Now, if a tribunal honored like the Supreme Court should undertake to declare that two and two make five, and a Senator as distinguished as the Senator from Maryland should uphold the high tribunal in its decision, I am not satisfied that it would be presumptuous in me to call that decision in question. But the Dred Scott decision was as absurd and irrational as such a reversal of the multiplication table, besides shocking the moral sense of mankind. The Senator will pardon the little scruple with which I denounce it. I claim nothing for myself; I may be weak; but, according to the measure of my abilities as God has given them to me, I enter a standing protest against that atrocious judgment, which was false in law, and also false in the history with which it sought to maintain its false law.

The Senator seems to imply that I am not familiar with the case. Sir, I know it too well. I have read carefully the opinion of the Chief Justice, which the

Senator now vaunts, and I have read, also, the opposing opinions, by the side of which that much vaunted opinion is dwarfed into the pettiness proper to a production in such a cause, ignoble in character, and impotent except in that little brief authority incident to judicial rank. The Senator pleads for this judgment in the name of jurisprudence, of justice, and of the nation. Sir, by the same title I denounce it, — in the name of jurisprudence, which it disgraces, of justice, which it denies, and of the nation it has offended.

Among the influences and agencies that helped forward the present Rebellion, and set fellow-citizens in bloody conflict with each other, the Dred Scott decision must always be held in dismal memory. It gave conspirators new confidence. It filled patriots for a while with despair. It became the platform of Slavery, whose tyrannical behests would have triumphed, had this decision been allowed to prevail. Hating the Rebellion in its origin and all the circumstances that nursed it into wicked being, we must hate this decision.

But the Senator wandered into eulogy of that old Supreme Court, now departed, when Marshall was Chief Justice, and from the past claimed consideration for the present. Sir, I have been no careless student of that court in its great and palmy days. I know the learning, wisdom, and ability of its judgments, and am proud that there are such pages in the jurisprudence of my country. My sentiments toward the court of that day are warmed, also, by personal experience. It is among the cherished reminiscences of early life, that I was privileged to know, as a youth might know, the illustrious magistrate whom the Senator praises so well. He received me at his table, and allowed me to accom-

pany him in his morning walks to the court-room. He was a venerable character. But I pray the Senator not to claim for the Dred Scott decision any of the reverence justly belonging to his name. There is no question of tribute to Chief Justice Marshall, or respect for the tribunal while he presided over it. The Dred Scott decision is more noticed from contrast with all that is good and great in the decisions of other days. It is sad that the tribunal that had established such an authority among us should do an act by which its authority has been endangered.

This whole debate is in the nature of a diversion or a deviation, and therefore I bring it back to the precise point from which it started. The Senator from Maryland invoked the Dred Scott decision as a reason why Congress should not recognize colored persons as citizens. In reply I simply asserted the right of Congress to interpret the Constitution without constraint from the Supreme Court, and this I now repeat. Each branch of the Government must interpret the Constitution for itself, according to its own sense of obligation under the oath we have all taken. And God forbid that Congress should consent to wear the strait-jacket of the Dred Scott decision!

Mr. Johnson closed his reply by saying: "And without meaning to offend the honorable member from Massachusetts, and with all the personal regard which I feel for him, and recollecting the courtesy that he has extended to me, and which I have reciprocated from the bottom of my heart, I say to him, without any purpose of offence, that, if I am obliged to act upon the weight of authority upon all questions of Constitutional Law, I shall prefer holding to the opinion of Taney than holding to the opinion of the honorable member." Mr. Hale, of New Hampshire, after remarking that he differed from Mr. Sumner, said: "I do not believe that I think any better of that decis-

ion than he does. I think it was an outrage upon the civilization of the age and a libel upon the law; but I do not think it was a disgrace to the Supreme Court of the United States." [*Laughter.*]

The bill passed, — Yeas 29, Nays 8.

The House of Representatives disagreed to the Senate amendment, and a Committee of Conference was ordered, which reported in its favor. But the House again disagreed, and, April 15th, another Committee of Conference was appointed, under instructions, moved by Mr. Webster, of Maryland, "to agree to no report that authorizes any other than *free white male citizens*, and those who have declared their intention to become such, to vote." The vote of the House on these instructions stood, Yeas 75, Nays 67. The Senate refused a further conference upon the terms proposed, which were abandoned by the House, and a conference without limitation was agreed to. May 19th, the Conference Committee reported, in lieu of the Senate amendment, the following clause: "All citizens of the United States, and those who have declared their intention to become such, and who are otherwise described and qualified under the fifth section of the Act of Congress providing for a temporary government for the Territory of Idaho, approved March 3, 1863." The reference to the Idaho Act required explanation, when the following dialogue took place.

MR. SUMNER. I should like to know the nature of the substitute, if the Senator from Maine [Mr. MORRILL] will be good enough to state it.

MR. MORRILL. I will state in a word that the effect of the amendment of the Committee of Conference is to authorize the temporary organization of the Government of Montana by that class of persons that were authorized to organize the Territory of Idaho.

MR. SUMNER. What class of persons was that?

MR. MORRILL. They were, as I recollect the qualification, white citizens of the United States, and such others as had declared their intention to become citizens. As it now stands, the qualification in Montana will be that the voters at the first election will be citizens of the United States, and such as have declared their intention to be citizens of the United States, and such as are qualified by the fifth section of the Act organizing the Territory of Idaho.

MR. SUMNER. That is, free white persons, I understand.

MR. MORRILL. That is what it comes to. . . . .

MR. SUMNER. Is not the new proposition almost identical with the original House proposition on the question of color?

MR. MORRILL. On the question of the exclusion of colored men it is identical. It does exclude colored men.

MR. SUMNER. I understand that the point of difference between the two Houses was simply as to the word "white" or "black."

MR. MORRILL. That was the principal question, and on that point I desire to say precisely how the Committee found the question. . . . .

MR. SUMNER. Then the proposition, as I understand it, is, that the Senate shall abandon its position. Why so? Because the House of Representatives will not abandon its position.

MR. MORRILL. No, Sir, the Senator will allow me: because there did not seem to be any practical sense in adhering to it; because to adhere to it defeated the bill; because to adhere to it accomplished no earthly purpose, gave nobody any right.

MR. SUMNER. For the other House to adhere on the other side defeated the bill also.

MR. MORRILL. Yes.

MR. SUMNER. And the question is, Which shall adhere, the side that is right or the side that is wrong?

MR. MORRILL. And that is the question the Committee submit to the Senate.

MR. SUMNER. I hope the Senate will adhere to its original position, and I believe that the assertion of that principle at this moment is more important than the bill.

In the debate that ensued, Mr. Harlan said that he should "vote against the report of the Committee, chiefly, however, because he did not think there was a pressing necessity for the organization of another Territory in that part of our domain." Mr. Sumner called attention to the Ordinance for the organization of the Northwest Territory, and then said: —

IT will be observed that in this Ordinance, to which we so often refer as a commanding authority, there is no discrimination of color. Now I ask if this is not a good precedent. Like the present bill, it was applicable to a vast unsettled Territory. Senators may say that our fathers, in the Ordinance, were not practical. I am not of that number. Senators may say that our fathers, in the Declaration of Independence, were not practical. I am not of that number. Senators may say that our fathers, in the Constitution of the United States, which contains no discrimination of color, were not practical. I am not of that number. Sir, I believe that the authors of this Ordinance, and the authors of the Declaration of Independence, and the authors of the Constitu-

tion, were eminently practical, when they excluded from those instruments any discrimination of color. But it is said that there are no persons in the new Territory to whom the principle is now applicable. This can make no difference. It is something to declare a principle, and I cannot hesitate to say that at this moment the principle is much more important than the bill. The bill may be postponed, but the principle must not be postponed.

MR. MORRILL. I will suggest to the Senator, if he will permit me, —

MR. SUMNER. Certainly.

— that the statement I made about its applicability was this: it is not by possibility applicable to any man of African descent. There are some five or six thousand Indians, to whom a bill in general phrase, without limitation of "white," might possibly apply; I do not say that it would apply to them in this case.

MR. SUMNER. Practically, the subject-matter of this clause is not Indians, but the well-known African race of this continent; and it is proposed, by specious words wrapped up in a clause borrowed from another bill, to exclude them from the right of suffrage in this Territory; and the argument for this injustice, as my friend from New Hampshire [Mr. HALE] has so ably stated, is only a reproduction of that well-known ancient argument for Slavery in the Territories. How often were we in those days compelled to encounter the charge that we were not practical, — that we were urging a prohibition, when there was no occasion for it! For myself, I believe you cannot too often assert a prohibition of Slavery, nor too often assert human rights, wherever they may be called in question; and especially do I believe

in the importance of such assertion when you are laying the foundations of a new community. "Just as the twig is bent the tree's inclined." These are familiar words of childhood. Would my friend from Maine have the tree that he plants grow up with a generous and protecting shelter for all mankind, or shall it be the bent and crabbed product of unhappy prejudices which are only a growth of Slavery? I know my friend means no such thing; but I insist that the policy he recommends tends to such fatal end. For myself, Sir, I am satisfied with the Declaration of Independence; I am satisfied with the Constitution on this important subject; and, adopting the language of our Lieutenant-General in the field, I desire to say, "I will fight on this line to the end, even if it takes all summer." There is no line better than that of human rights. While fighting on that line, I cannot err; there is no pertinacity too great; there is no ardor that is not respectable. I thank General Grant for these words. They express his own steadfast purpose, and we all thank him. But each, in his sphere, may make them his own. I make them mine, wherever human rights are in question.

The report of the Conference Committee was adopted, — Yeas 26, Nays 13. And so this first battle for colored suffrage was lost.

CLAIMS ON FRANCE FOR SPOLIATIONS OF AMERICAN COMMERCE PRIOR TO JULY 31, 1801.

REPORT IN THE SENATE, OF THE COMMITTEE ON FOREIGN RELATIONS, APRIL 4, 1864.

APRIL 14th, the Senate, after debate, ordered three thousand extra copies of this report, — Yeas 23, Nays 19. Mr. Reverdy Johnson, while urging the extra copies, remarked: "The report is quite an elaborate one, drawn up with all the fulness which characterizes papers of this description prepared by the Chairman of the Committee on Foreign Relations. He has collected together, very accurately, I have no doubt, all the facts connected with the claims. He has given the history of the proceedings in Congress and the proceedings of the Executive, and has examined very fully all the principles of law applicable to the questions which the claims present."

The same report was subsequently adopted by the Committee on Foreign Relations, and printed by the Senate, March 12, 1867, and also January 17, 1870.

THE Committee on Foreign Relations, to whom were referred numerous petitions and resolutions of State Legislatures, taken from the files of the Senate, and also the petition of sundry citizens of New York, presented at the present session, asking just compensation for "individual" claims on France, appropriated by the United States to obtain release from important "national" obligations, have had the same under consideration, and beg leave to report.

THE welfare of the Republic requires that there should be an end of "suits," lest, while men are mortal, these should be immortal. Such is a venerable

maxim of the law, illustrated by the case before the Committee. The present claims have outlived all the original sufferers, and at least two generations of those who have so ably enforced them in the Halls of Congress. Against their unwonted vitality death has not been able to prevail.

CHARACTER OF THESE CLAIMS.

Of all claims in our history, these are most associated with great events and great sacrifices. First in time, they are also first in character, for they spring from the very cradle of the Republic and the trials of its infancy. To comprehend them, you must know, first, how independence was won, and, secondly, how, at a later day, peace was assured. Other claims have been personal or litigious; these are historic. Here were "individual" losses, felt at the time most keenly, and constituting an unanswerable claim upon France, which, at a critical moment, were employed by our Government, like a credit or cash in hand, to purchase release from outstanding "national" obligations, so that the whole country became at once trustee of these sufferers, bound, of course, to gratitude for the means thus contributed, but bound also to indemnify them against these losses. And yet these sufferers, thus unique in situation, have been compelled to see all other claims for foreign spoliations satisfied, while they alone have been turned away. At the beginning of our history, our plundered fellow-citizens obtained compensation to the amount of many million dollars on account of British spoliations. Similar indemnities have been obtained since from Spain, Naples, Denmark, Mexico, and the South American states,

while, by the famous Convention of 1831, France contributed five million dollars to the satisfaction of spoliations under the Continental system of Napoleon. Spain stipulated to pay for every ship or cargo taken within Spanish waters, even by the French; so that French spoliations on our commerce within Spanish waters have been paid for, but French spoliations on our commerce elsewhere before 1800 are still unredeemed. Such has been the fortune of claimants the most meritorious of all.

In all other cases there has been simply a claim for foreign spoliations, but without superadded obligation on the part of our Government. Here is a claim for foreign spoliations, the precise counterpart of all other claims, but with superadded obligation, on the part of our Government, in the nature of a debt, constituting an *assumpsit*, or implied promise to pay; so that these sufferers are not merely *claimants* on account of French spoliations, but they are also *creditors* on account of a plain assumption by the National Government of the undoubted liability of France. The appeal of these *creditor claimants* is enhanced beyond the pecuniary interests involved, when we consider the nature of this assumption, and especially that in this way our country obtained final release from embarrassing stipulations with France contracted in the war for national independence. Regarding it, therefore, as *debt*, it constitutes part of that sacred debt incurred for national independence, and is the only part now outstanding and unpaid.

PRELIMINARY OBJECTIONS.

BEFORE proceeding to consider the nature of existing obligations on the part of the United States, the Committee ask attention to three objections which they encounter on the threshold: the first, founded on the alleged antiquity of the original claims; the second, on the alleged character of the actual possessors; and the third, on the present condition of the country.

I. — CLAIMS ANCIENT, BUT NOT STALE.

IT is said that the claims are ancient and stale, and therefore not to be entertained. It is true that the claims are the most ancient of any now pending, and that they date from the very origin of our existence as a nation. But in this respect they do not differ from a Revolutionary pension or a Revolutionary claim. Down to this day there is a standing committee of the Senate, entitled "Committee on Revolutionary Claims"; but if a claim traced to the Revolution must be rejected for staleness, there can be little use for this committee. If these claims, after uninterrupted sleep throughout the long intervening period, were now for the first time revived, they might be obnoxious to this imputation. But, as from the beginning of the century they have occupied the attention of Congress, and been sustained by speeches, reports, and votes, it is impossible to say that they have been allowed to sleep.

The whole case was stated with admirable succinctness, as long ago as 1807, by Mr. Marion, of South Carolina, in the report of a committee of the House of Representatives.

"From a mature consideration of the subject, and from the best judgment your Committee have been able to form on the case, *they are of opinion that this Government*, by expunging the second article of our Convention with France of the 30th September, 1800, *became bound to indemnify the memorialists for those just claims* which they otherwise would rightfully have had on the Government of France, for the spoliations committed on their commerce by the illegal captures made by the cruisers and other armed vessels of that power, in violation of the Law of Nations, and in breach of treaties then existing between the two nations; which claims they were, by the rejection of the said article of the Convention, forever barred from preferring to the Government of France for compensation." [1]

Claims thus authoritatively stated at that early day cannot be overcome by any sleep.

It is true that these claims were pressed with less constancy and determination at the beginning of the century than at a later day. But there are two sufficient reasons for the change. First, the evidence on which they are founded was less generally known at the beginning than afterward. It was only in 1826, under the administration of John Quincy Adams, by the communication to Congress of the ample materials accumulated in the Archives of State, that the true strength of the case was fully revealed. Here, in one full volume, was the documentary history of the whole double transaction,[2] showing at once the original obligation of France, and the substituted obligation of the United States, reinforced by the associations of our own Revolutionary history. A more sufficient reason

[1] House Journal, February 18, 1807. Report on Petition of Merchants of Charleston, S. C.: Reports, 9th Cong. 2d Sess., Vol. II.

[2] Senate Documents, 19th Cong. 1st Sess., Vol. V., Doc. 102.

for this change is found in the fact, that for some time in the early part of the century our country was still laboring under pressure of the Revolutionary debt. As this pressure was gradually removed, and the national resources became more apparent, these claims were naturally urged with more confidence, until, on the final extinction of that debt, they occupied the attention of the best minds in both Houses of Congress.

No single question in our history has been the subject of such a succession of able reports. Whether counted or weighed, these reports are equally exceptional. They are no less than forty-one in number, twenty-two in the Senate and nineteen in the House. Among the eminent characters whose names they bear are Edward Livingston, John Holmes, Edward Everett, Daniel Webster, Caleb Cushing, Charles J. Ingersoll, John M. Clayton, and Rufus Choate. Out of the whole number only three have been adverse, — one in the Senate and two in the House. But the three adverse reports were evasive only, besides being prior to the communication of the decisive evidence on the subject. The thirty-six reports since that communication were all in favor of the claims.[1]

Resolutions in favor of these claims by thirteen States, being the original number which declared independence, have been presented to Congress between the years 1832 and 1858. Some States, not content with one series, have repeated their resolutions, and accompanied them with elaborate arguments. They all tend to the conclusion that it is the duty of Congress, without further delay, to provide for these claims; and Senators and Representatives are earnestly requested to use their

[1] See Appendix.

best exertions for an Act of Congress to carry this obligation into effect.

Memorials and petitions from the beginning testify to the sleeplessness of these claims. On the 5th of February, 1802, only forty-six days after the promulgation of the Convention of 1800, they began, and they have continued from that early day down to this very session of Congress, making in all four thousand six hundred and two. Of these, nineteen hundred and thirty-one were in the Senate, two thousand six hundred and seventy-one in the House. They are chiefly from original sufferers, their executors, administrators, assigns, widows, and heirs, residing in the large seaports from which the despoiled vessels originally sailed; but there are some from all parts of the country, where, in the vicissitudes of life, the representatives of original sufferers have been carried, — all of which may be seen in the list of these petitioners.[1]

Two several times — once under President Polk, and again under President Pierce — both Houses of Congress concurred in an act for the relief of these claimants; but this tardy justice was arrested by Presidential veto.

In the face of this constant succession of reports, resolutions of State Legislatures, and petitions, constituting not only "continual claim," but continual recognition of the claim, — the whole crowned by two several Acts of Congress, — it is impossible to infer negligence in the claimants, or, indeed, any assumption of inordinate confidence. They have had good reason to believe that they should be successful. Under such circumstances, the lapse of time, sometimes urged against them, becomes an argument in their favor; for it adds constantly re-

[1] Senate Reports, 38th Cong. 1st Sess., No. 41, Appendix.

curring testimony to their merits, besides a new title from the disappointment to which they have been doomed. Claims beginning thus early, and thus sustained, may be ancient, but they cannot be stale.

II. — POSSESSORS OF THE CLAIMS ARE NOT SPECULATORS.

A TRIVIAL remark, which is rather slur than objection, may justify a moment's attention. It is sometimes said that these claims are no longer the property of the original sufferers or their representatives, but that they have passed, like a fancy stock, into the hands of speculators. This remark, if it had foundation in fact, has little in equity. It would be hardly creditable for a government to take advantage of its own procrastination, and refuse just compensation, because the original sufferer had been compelled by unwelcome necessity to discount his claims.

From the nature of the case, such claims, being unliquidated, do not readily pass from hand to hand, but remain in the original custody, as has become apparent in ample experience. Precisely the same reflection was cast upon the claims against Spain, Denmark, and Naples, — and, indeed, it is cast upon long outstanding claims generally, until it has become a commonplace of sarcasm. The records of successive Commissions which have liquidated foreign claims afford its best refutation. In every case these Commissions required proof of property; but the evidence disclosed that the original sufferers, or their legal representatives, including heirs, executors, assignees of bankrupts, persons having a lien for advances, or underwriters, possessing in law and equity the same right as the original sufferers, were actual possessors of the

larger part. There is no reason to suppose that it would be otherwise with the claims for French spoliations. On the contrary, it is believed that they remain substantially unchanged, except by legal inheritance.

The great speculator has been Death; for there are few of these claims that have not passed through his hands. Such a transfer cannot draw the title into doubt, especially when we consider the character of the petitioners whose names are spread on the journals of Congress. It is well known that in many families these claims still exist as heirlooms, transmitted by ancestral care in full confidence that sooner or later they will be recognized by the Government.

III.—PRESENT CONDITION OF THE COUNTRY NO REASON AGAINST PAYMENT OF JUST DEBTS.

It is sometimes suggested, that, even assuming the meritorious character of these claims, yet, in the present condition of the country, they ought to be postponed. Looking at the practical consequences of this suggestion, it will be found, that, though plausible in *form*, it is fatal in *substance*. Any postponement must inevitably throw these claims into direct competition with those now accumulating on account of losses during the Rebellion, having in their favor the swelling sympathies of our time. It is not unjust to human nature, if the Committee say that the distant in time, like the distant in space, is too often out of mind. If the earlier claims are just, they should not be exposed to the hazards of any such competition, when feeling will be stronger than reason. From the probability of future claims, whose shadows already commence, the argument

is strengthened for the immediate satisfaction of those now existing, especially when we consider their character and origin.

The resources of the people are tasked to put down the Rebellion which Slavery has aroused. Let nothing be stinted. But there is another duty not to be forgotten. *The just debts of the Republic must be paid,* to the last dollar. Here, also, nothing must be stinted; and the glory of the one will be kindred to the glory of the other. The Republic will have new title to love at home and to honor abroad, when with one hand it overcomes the Rebellion now menacing its existence, and with the other does justice to ancient petitioners, long neglected, constituting the only remaining creditors left to us from the War of Independence.

STATEMENT OF THE QUESTION.

THEREFORE, putting aside all preliminary objections from alleged antiquity, from the character of the actual possessors, or from the present condition of the country, the Committee insist that the present obligations of the United States must be determined according to principles of justice and the facts of the case. The hearing now is as if there had been no lapse of time since the obligations accrued, and as if no war now existed to task the country.

Is the money justly due? To answer this question, the subject must be considered in detail, under several heads.

First. Claims of citizens of the United States against France, founded on spoliations of our commerce, as seen in their origin and history.

Secondly. Counter claims of France, founded on treaty stipulations and services rendered in the War of Independence, also as seen in their origin and history.

Thirdly. The Convention of 1800 and the reciprocal release of the two Governments, by which the "individual" claims of the petitioners were treated as a set-off to the "national" claims of France.

Fourthly. The assumption by our Government of the obligations of France, so that the United States were substituted for France, and became liable to these petitioners as France had been liable.

After considering these heads in their order, it will be proper to review the objections alleged against the liability of the United States: (1.) from the semi-hostile relations between France and the United States anterior to the Convention; (2.) from payments under the Louisiana Treaty; (3) from payments under the Convention with France in 1831; (4.) from the Act of Congress annulling the early treaties with France; (5.) from the early efforts of our Government to obtain from France the satisfaction of these claims; and (6.) from the desperate character attributed to these claims at the time of their abandonment.

The question of "just compensation" will present itself last: (1.) in the advantages secured to the United States by the sacrifice of these claims; (2.) in the value of the losses which the claimants suffered; and (3.) in the recommendation of the Committee.

The subject is of such importance, from the magnitude of interests involved, and from its historic character, that the minuteness of this inquiry will not be regarded as superfluous.

I.

CLAIMS OF AMERICAN CITIZENS IN THEIR ORIGIN AND HISTORY.

THE history of French spoliations on our commerce is a gloomy chapter, where a friendly power, assuming the name of Republic, shows itself fitful, passionate, and unjust. This conduct is more remarkable, when it is considered, that, only a short time before, France, while yet a kingdom, contributed treasure and blood to sustain our national independence. And yet an explanation may be found in the extraordinary temper of the times. By a generous uprising of the people the kingdom was overthrown, and then, as the alarmed royalties of Europe intervened, the head of the monarch was flung to them as a gage of battle. The gage had been accepted in advance, and all those royalties, by successive treaties, entered into coalition against France. The fleets of England came tardily into the great contest, but their presence gave to it a new character, and enveloped ocean as well as land in its flames. The growing commerce of the United States suffered from both sides, but especially from France, driven to frenzy by the British attempt, in the exercise of belligerent rights, to starve a whole nation.

French feelings were still further aroused against the United States, when, instead of friendship and alliance, France was encountered by the Proclamation of Neutrality launched by Washington on the 22d April, 1793, where he undertook, in behalf of the United States, to "adopt and pursue a conduct friendly and impartial toward the belligerent powers."[1] Here, according to

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 249.

December 5, 1793, where he speaks as follows: "The *vexations and spoliation* understood to have been committed on our vessels and commerce by the cruisers and officers of some of the belligerent powers appeared to require attention. The proofs of these, however, not having been brought forward, the description of citizens supposed to have suffered were notified, that, on furnishing them to the Executive, *due measures would be taken to obtain redress of the past* and more effectual provisions against the future."[1] Here, then, was a double promise from the National Government, and under its encouragement our merchants resumed their commerce, venturing once more upon the ocean. Their Government had tempted them, and, on the occurrence of "injuries on the high seas," these good citizens, according to instructions, made haste to lodge with the Department of State the "well-authenticated evidence of the same." Their children and grandchildren are waiting, even now, the promised redress.

Thus, at the very beginning, these spoliations were recognized by both Governments in their true character. The National Convention, even in its arbitrary edict, confessed them. The Administration of Washington, in its solemn assurance of protection, also confessed them. Offspring of wrongful violence in the heat of war, they were regarded on both sides as indefensible. Ministers, in this respect, reflected the sentiments of the two Governments. Fauchet, the French minister at Philadelphia, in a communication to the Secretary of State, under date of March 27, 1794, expressed himself in this manner: "If any of your merchants have suffered any injury by the conduct of our privateers, (a thing which

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 253.

would be contrary to the intention and express orders of the Republic,) they may with confidence address themselves to the French Government, which will never refuse justice to those whose claims shall be legal."[1] Mr. Morris, our minister at Paris, under date of March 6, 1794, gave vent to his feelings: "These captures create great confusion, *must produce much damage to mercantile men*, and are a source of endless and well-founded complaint. Every post brings me piles of letters about it from all quarters, and I see no remedy. . . . . In the mean time, if I would give way to the clamors of the injured parties, I ought to make demands very like a declaration of war."[2] But M. Buchot, the French Commissioner of Foreign Relations, addressed Mr. Morris the following soothing words, under date of July 5, 1794: "The sentiments of the Convention and of the Government towards your fellow-citizens are too well known to you to leave a doubt of *their dispositions to make good the losses which the circumstances inseparable from a great revolution may have caused some American navigators to experience.*"[3] Such was the testimony, at that day, of ministers on both sides.

Meanwhile, Genet, the French minister, was recalled, at the instance of President Washington, on account of presumptuous interference in our affairs, especially hostile to the Proclamation of Neutrality; and John Jay reached London to negotiate the treaty of 1794 which goes under his name. The latter event added to the exasperation of France. But Mr. Monroe, who took the place of Mr. Morris at Paris, was full of sympathy for the new republic, even when he frankly

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 263.
[2] Ibid., p. 77.
[3] Ibid., pp. 77, 78.

discharged his unpleasant duties. In a communication to the Committee of Public Safety, under date of October 18, 1794, he exposed "a frightful picture of difficulties and losses, equally injurious to both countries, and which, if suffered to continue, will unavoidably interrupt for the time the commercial intercourse between them."[1] Notwithstanding this strong language, his influence was thought to have prevailed so far that President Washington ventured to announce, in a confidential message of February 28, 1795, good news for our plundered merchants. "It affords me," he said, "the highest pleasure to inform Congress that perfect harmony reigns between the two republics, *and that those claims are in a train of being discussed with candor, and of being amicably adjusted.*"[2] This perfect harmony was short-lived, and the hopes flowering from it were nipped.

The rumor of Mr. Jay's negotiations with England had already produced uneasiness in France; but when the treaty, on its ratification, in October, 1795, was finally divulged, there was an outburst against us. The treaty was pronounced to be in violation of existing engagements with France, and our whole policy was openly branded by the President of the Directory, in reply to Mr. Monroe, as a "condescension of the American Government to the wishes of its ancient tyrants."[3] The Directory refused to receive Charles Cotesworth Pinckney, sent by our Government in place of James Monroe. Meanwhile, by a succession of cruel edicts, it unleashed all its cruisers to despoil our commerce, and cry havoc wherever they sailed. On the 2d July, 1796,

[1] American State Papers, Foreign Relations, Vol. I. p. 683.
[2] Ibid., p. 469. [3] Ibid., p. 747.

it was declared that "the French Republic will treat neutral vessels, either as to confiscation, as to searches, or capture, *in the same manner as they shall suffer the English to treat them.*"[1] The indefinite terms of this edict were justly denounced by our Government, as "giving scope for arbitrary constructions, and consequently for unlimited oppression and vexation."[2] These results were soon manifest. With contagious injustice, the French commissioners at San Domingo reported to the Government at home, "that, having found no resource in finance, and knowing the unfriendly disposition of the Americans, and to avoid perishing in distress, they had armed for cruising, and that already eighty-seven cruisers were at sea, and that for three months preceding the Administration had subsisted and individuals been enriched with the products of those prizes."[3] So extensively did this brutality prevail, that it was announced that American vessels "no longer entered the French ports, *unless carried in by force.*"[4]

This spirit of hostility broke forth in another edict of the Directory, which became at once a universal scourge to American commerce. This fulmination, bearing date March 2, 1797, after enlarging the list of contraband, and ordaining other measures of rigor, proceeds to declare all American vessels lawful prize, if found without a *rôle d'équipage*, or *circumstantial list* of the crew:[5] all of which was in violation of existing treaties, and also of American usage, which notoriously did not require, among a ship's papers, any such list. No edict was so comprehensive in its sweep; for, as all our vessels

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 149.
[2] Report of the Secretary of State, Jan. 18, 1799: Ibid., p. 434.
[3] Ibid., pp. 434, 435. [4] Ibid., p. 435. [5] Ibid., p. 163.

were without this safeguard, they were all defenceless. Numberless spoliations ensued, so absolutely lawless and unjust that John Marshall did not hesitate to record of them in his journal, under date of December 17, 1797, "The claims of the American citizens for property captured and condemned for want of a *rôle d'équipage*" constituted "*as complete a right as any individuals ever possessed.*"[1] This right, thus complete, according to the judgment of our great authority, enters into a large part of the claims still pending before Congress.

As if to perfect this strange, eventful history, a third edict, at once inhospitable and unjust, was launched by the Directory, January 18, 1798, prohibiting "every foreign vessel which in the course of her voyage shall have entered into an English port from being admitted into a port of the French Republic, except in case of necessity, and, still further, handing over to condemnation "every vessel found at sea loaded in whole or in part with merchandise the production of England or of her possessions."[2] This edict was promptly denounced by the American plenipotentiaries newly arrived at Paris. In earnest, vigorous tones, they said that it invaded at the same time the interests and the independence of neutral powers, — *that it took from them the profits of an honest and lawful industry,* as well as the inestimable privilege of conducting their own affairs as their own judgment might direct, — and that acquiescence in it would establish a precedent for national degradation, authorizing any measures power might be disposed to practise.[3] Our plenipotentiaries depicted the spirit in which French spoliations had their origin, and

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 471.
[2] Ibid., p. 377.
[3] Ibid., p. 484.

the humiliating consequences of submission to the outrage; but the personal sufferers are, down to this day, without redress.

Perplexed and indignant, the United States constituted a special mission of three eminent citizens, Mr. Pinckney, Mr. Marshall, and Mr. Gerry, who were charged to secure indemnity for these spoliations. In his elaborate instructions, dated July 15, 1797, the Secretary of State, Mr. Pickering, lays down the following rule of conduct: "In respect to the depredations on our commerce, the principal objects will be to agree on an equitable mode of examining and deciding the claims of our citizens, and the manner and periods of making them compensation. . . . . The proposed mode of adjusting those claims, by commissioners appointed on each side, is so perfectly fair, we cannot imagine that it will be refused." Although this reparation was not made "an indispensable condition of the proposed treaty," yet the plenipotentiaries were enjoined "not to renounce these claims of our citizens, *nor to stipulate that they be assumed by the United States as a loan to the French Government.*"[1] Thus fully were these claims recognized at the time by our Government, and most carefully placed under the protection of our plenipotentiary triumvirate.

The triumvirate found the French Republic in no mood of justice. Bonaparte was then triumphant at the head of the army of Italy, and Talleyrand was exhibiting his remarkable powers at the head of the foreign relations of France. Victory had given confidence, and the exulting Republic was standing tiptoe, more disposed to strike than negotiate, unless it

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 454, 455.

could dictate, and implacable always towards England and all supposed to sympathize with that power. After exactions and humiliations hard to bear, the plenipotentiaries were compelled to return home without any official reception by the intoxicated Government to which they were accredited, but not before they had encountered the masterly ability of Talleyrand, who, in reply to their statement of the claims of the United States, presented the counter claims of France. Though in Paris merely on sufferance, they had unofficial interviews with various agents of the Republic, and even with Talleyrand himself; but without dwelling on details not pertinent to the occasion, it is enough to say, that, while refusing to offer a loan or bribe, they were able to declare frankly "that France had taken violently from America more than fifteen millions of dollars, and treated us in every respect as enemies";[1] and also to receive from Talleyrand a concession, recorded in one of their despatches, that "some of those claims were probably just," with the inquiry, "whether, if they were acknowledged by France, we could not give a credit as to the payment, — say, for two years?"[2] Here again was an admission not to be forgotten.

The return of our disappointed plenipotentiaries was aggravated by circumstances which an eminent Continental writer has not hesitated to brand as "unique in the annals of diplomacy."[3] They had been invited to contribute a *gratification* of twelve hundred thousand francs, and the whole desperate intrigue, conducted by persons known in the correspondence as W, X, Y, Z, was

[1] American State Papers, Foreign Relations, Vol. II. p. 163.
[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 487.
[3] Garden, Traités de Paix, Tom. VI. p. 120.

unveiled to the world. The country was indignant, and war seemed imminent. By various acts of legislation Congress entered upon preparations, summoning Washington from retirement to gird on his sword once more as Lieutenant-General. The claims for French spoliations were never absent from mind. By Act of the 28th May, 1798, public vessels of the United States were authorized to capture all "armed vessels sailing under authority or pretence of authority from the Republic of France," "*which shall have committed,* or which shall be found hovering on the coasts of the United States for the purpose of committing, *depredations on the vessels belonging to citizens thereof*"; and this statute was introduced by a preamble asserting "*depredations on the commerce of the United States,* . . . . in violation of the Law of Nations and treaties between the United States and the French nation." By Act of June 13, 1798, all commercial intercourse was suspended between the United States and France, until "the Government of France . . . . shall clearly disavow, and shall be found to refrain from, *the aggressions, depredations, and hostilities which have been and are by them encouraged and maintained against the vessels and other property of the citizens of the United States.*" By Act of June 25, 1798, merchant vessels of the United States were authorized to resist search or seizure by any French armed vessel, to repel assaults, and to capture the aggressors, until "the Government of France . . . . shall disavow, and shall cause the commanders and crews of all armed French vessels *to refrain from, the lawless depredations and outrages hitherto encouraged and authorized by that Government against the merchant vessels of the United States.*" By Act of July 7, 1798, the treaties with France were de-

clared to be no longer obligatory on the United States; and this statute was introduced by a preamble asserting that "*the just claims of the United States for reparation of injuries* have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity." Thus, by express words, in repeated acts, did Congress recognize these claims.

By such vigorous measures were the rights of these claimants asserted, while the country assumed an attitude of defence. The French Directory became less intolerable, and negotiations were invited again, with assurance that the former rudeness should not be renewed. John Adams was President, and for the sake of peace he seized the opportunity of this overture, by appointing Chief Justice Ellsworth, Patrick Henry, and William Vans Murray as a second plenipotentiary triumvirate to France. As Mr. Henry declined, Mr. Davie, of North Carolina, was substituted in his place. In adjusting the instructions President Adams himself took a personal part, as appears by a letter to the Secretary of State, where he says: "The principal points, *indeed all the points*, of the negotiation were so minutely considered and *approved by me and all the heads of department* that nothing remains but to put them into form and dress: this service I pray you to perform as promptly as possible."[1] But "all the points" were three only: 1st, Indemnity for spoliations of American commerce; 2d, The unquestionable wrong of seizing American vessels for want of the paper known to French law as *rôle d'équipage*; 3d, The refusal to renew the treaty guaranty of the French West Indies.

[1] Adams's Works, Vol. I. p. 553.

Such were the *ultimata* originally settled by the President and his cabinet on the 11th of March, 1799, and afterwards fully developed in the elaborate instructions of Mr. Pickering, dated 22d October, 1799, which, after announcing that "the conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States," proceeded to declare, as the first point, that the plenipotentiaries, "*at the opening of the negotiation*, will inform the French ministers that the United States expect from France, *as an indispensable condition of the treaty*, a stipulation to make to the citizens of the United States *full compensation for all losses and damages* which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels and other property." And the instructions end, as they began, by declaring, first among the terms, "that an article be inserted for establishing a board with suitable powers to hear and determine the claims of our citizens, *and binding France to pay or secure payment of the sums which shall be awarded.*"[1] Observe the positiveness of the assertion.

These instructions attest the interest of our Government. Placed first among the *ultimata* adopted in the councils of President Adams, these indemnities were placed first in the diplomatic instructions. There is yet other evidence of the character and amount of the spoliations. The Secretary of State, in a report to Congress, dated January 18, 1799, after attributing them to French feeling on account of the British treaty, proceeds to characterize them in remarkable words: "Yet that treaty had been made by the French Government

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 562, 575.

its chief pretence for those unjust and cruel depredations on American commerce which have brought distress on multitudes and ruin on many of our citizens, and occasioned *a total loss of property to the United States of probably more than twenty millions of dollars.*"[1] Such were the outrages for which our plenipotentiaries were to seek redress.

The Directory had ceased; but on reaching Paris the plenipotentiaries were cordially received by Talleyrand, the citizen minister of Foreign Affairs, who without delay presented them to the First Consul as he was about to mount for that wonderful campaign which, opening with the passage of the Alps, closed at Marengo. Negotiations commenced at once, Joseph Bonaparte, elder brother of the First Consul, and afterward King of Spain, being at the head of the commission on the part of France. "Appreciating," as they announced, "the value of time," the American plenipotentiaries, in a brief note, on the 7th of April, — the very day when the exchange of powers was completed, — proposed "an arrangement *to ascertain and discharge the equitable claims of the citizens* of either nation upon the other, whether founded on contract, treaty, or the Law of Nations"; all of which was to be done in order "to satisfy the demands of justice, and render a reconciliation cordial and permanent."[2] Thus instantly were these claims presented. The French plenipotentiaries in their prompt reply admitted that "*the first object* of the negotiation ought to be the determination of the regulations, and the steps to be followed, for *the estimation and indemnification of injuries for which either nation may make*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 480.
[2] Ibid., pp. 580, 581.

claim for itself or for any of its citizens."[1] Here was the suggestion of claims, not only "individual," but also "national," under which loomed the counter claims of France.

The American plenipotentiaries, while professing to be free from "apprehension of an unfavorable *balance*," protested against the consideration of any "national" claims until some "convenient stage of the negotiation, after it shall be seen what arrangement would be acceptable for *the claims of citizens*."[2] The French plenipotentiaries rejoined by enforcing "national" as well as "individual" claims.[3] The issue seemed to be made. On the one side were the "individual" claims of American citizens, on the other side the "national" claims of France. The American plenipotentiaries were not authorized to recognize the "national" claims alone. The French plenipotentiaries were not authorized to recognize the "individual" claims, without a previous recognition on our part of the "national" claims. At last, after various efforts at harmony, it was officially announced that "the negotiation was at a stand on the part of France," as her plenipotentiaries were constrained by instructions of the First Consul to make "the acknowledgment of former treaties the basis of negotiation *and the condition of compensation*."[4] The First Consul was then on the Italian slope of the Alps, about to pounce upon the astonished Austrians. Claims and counter claims were of little concern to him.

Thus far the Committee have exhibited our claims in their origin and history. The time has come to change the scene, and to exhibit those counter claims which

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 581.
[2] Ibid., p. 582. [3] Ibid., p. 583. [4] Ibid., p. 609.

played such part in the successive negotiations, and finally produced that memorable *dead-lock*, when the two powers stood face to face with antagonist pretensions, unable to go forward, and unwilling to go backward.

II.

COUNTER CLAIMS OF FRANCE, THEIR ORIGIN AND HISTORY.

THE counter claims of France differ widely from the claims of American citizens. They were not "individual," but "national," being founded on alleged violations of treaty stipulations assumed by the United States in return for the aid of France in the establishment of national independence. During the protracted controversy between the two republics they were detailed in numerous official notes; but they were brandished by Talleyrand, with offensive skill and effect, in the very faces of our insulted plenipotentiaries, under date of March 18, 1798, when, while driving them from Paris, he insisted "that *the priority of grievances and complaints belonged to the French Republic*," and "that these complaints and these grievances were as real as numerous, long before the United States had the least grounded claim to make."[1] Careful inquiry enables us to see that this allegation, thus confidently uttered, was not without a certain foundation; and here we revert to the history of our country.

The triumph with which the War of Independence happily ended came tardily, after seven years of battle, suffering, and exhaustion; but it was hastened, if not as-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 490.

sured, by the generous alliance of France. From Bunker Hill to Saratoga the war was checkered with gloom, which even the surrender of Burgoyne did not suffice to dispel. Then came the dreary winter of Valley Forge, when soldiers of Washington, after treading the snows barefoot, were obliged, for want of blankets, to huddle all night by the fires, and even the stout heart of the commander-in-chief bent so far as to announce, in formal letter to Congress, that, "unless some great and capital change suddenly takes place, the army must inevitably be reduced to one or other of these three things, — starve, dissolve, or disperse." [1] But the scene changed with the glad tidings that France, by solemn treaty, signed by Franklin, February 6, 1778, had bound herself to "guaranty to the United States their liberty, sovereignty, and independence, absolute and unlimited." The camp broke forth with the mingled joy of soldier and patriot, as it turned gratefully to Lafayette, already by the side of Washington, glorious forerunner of armies and navies promised to our cause. Congress took up the strain, and, by unanimous vote, ratified the treaty which opened to our country the gates of the Future.

It is difficult to estimate the value of this treaty in money, especially when we consider its consequences. According to the report of Calonne, the French Minister of Finance, the war which ensued in the support of this guaranty cost France fourteen hundred and forty millions of francs, or about two hundred and eighty millions of dollars. But French blood, more costly than money, was shed on land and sea in the same cause, until at last the army of Cornwallis surrendered at York-

[1] To the President of Congress, December 23, 1777: Writings, ed. Sparks, Vol V. p. 197.

town to the allied forces of Rochambeau and Washington, and the war closed by the recognition of our national independence. If liberty be priceless, if life be priceless, then was the aid lavished by France infinite beyond calculation.

The engagements were not all on the side of France. Beyond gratitude due for this powerful alliance, were express obligations solemnly assumed by the United States, not only in the Treaty of Alliance, but also in the Treaty of Amity and Commerce negotiated on the same day. These obligations, constituting the consideration of the weighty contract, were of two classes: first, a guaranty by the United States of the possessions of France in America; and, secondly, important privileges for the armed ships of France, with a promise of American convoy to French commerce.

1. The terms of the guaranty are as follows: —

"The two parties guaranty, *mutually*, from the present time *and forever*, against all other powers, to wit: The United States to His Most Christian Majesty, *the present possessions of the crown of France in America*, as well as those which it may acquire by the future treaty of peace; and His Most Christian Majesty guaranties, on his part, to the United States, *their liberty, sovereignty, and independence, absolute and unlimited*, as well in matters of government as commerce, and also their possessions, and the additions or conquests that their Confederation may obtain during the war from any of the dominions now or heretofore possessed by Great Britain in North America."[1]

To fix more precisely the sense of this article, it was further stipulated, that, —

"*In case of a rupture* between France and England, the

[1] Treaty of Alliance, Art. XI.: U. S. Statutes at Large, Vol. VIII. p. 10.

reciprocal guaranty shall have its full force and effect the moment such war shall break out; and if such rupture shall not take place, the mutual obligations of the said guaranty shall not commence until the moment of the cessation of the present war between the United States and England shall have ascertained their possessions."[1]

The possessions of France in America at this date were the islands of San Domingo, Martinique, Guadeloupe, St. Lucia, St. Bartholomew, Deseada, Mariegalante, St. Pierre, Miquelon, and, on the main-land, Cayenne, — each and all of which the United States guarantied to France *forever*, being a *continuing guaranty*, so far as this term of law is applicable to an international transaction, which, beginning "in case of a rupture between France and England," was operative after "the cessation of the present war between the United States and England," and was to continue "forever."

The terms of the "guaranty" are general, and it was "forever." Even if limited to *defensive* war, it would be difficult to say that France was not engaged in such a war, with the added incident that it was a war by a combination of kings to overcome a republic. France was alone, with the royalties of Europe embattled against her. Only after the execution of the King England joined this array, lending to it invincible navies. But, according to official avowals, it was what King George called "the atrocious act recently perpetrated at Paris"[2] that finally prompted the part she undertook, and her real object, in the language of Mr. Fox, was no other than "the destruction of the internal Government

[1] Treaty of Alliance, Art. XII.: U. S. Statutes at Large, Vol. VIII. p. 10.
[2] Message to Parliament, January 28, 1793: Hansard, Parliamentary History, Vol. XXX. col. 289.

of France."[1] The case was unprecedented; but it is difficult to say that it did not come under the "guaranty." The *casus fœderis* had occurred. If France did not exact performance, that is no reason why our obligations should be disowned, when, at the present moment, we are trying to arrive at some appreciation of their extent. A careful examination of the treaty shows that the "guaranty" became primarily obligatory on the occurrence of *a rupture between France and England.* Nothing is said or suggested as to the character of the war, whether offensive or defensive. It is enough that there was "a rupture." In such a case, the "guaranty," according to the illustration of Cicero, was, *tanquam gladius in vagina,* at the disposal of France. Our Secretary of State, even while seeking to limit its application, seems to have seen it prospectively in this light, when, in his instructions of July 15, 1797, to our plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry, he said, "Our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national faith."[2]

2. The Treaty of Amity and Commerce contained a succession of mutual stipulations, by which the United States undertook,—*first,* to protect and defend by their ships of war, or convoy, any or all vessels belonging to French subjects, so long as they hold the same course, "against all attacks, force, and violence, in the same manner as they ought to protect and defend" the vessels of citizens of the United States;[3] *secondly,* to open

[1] Speech on the King's Message, February 1, 1793: Hansard, XXX. 807.
[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 457.
[3] Articles VI., VII.: United States Statutes at Large, Vol. VIII. p. 16.

their ports to French ships of war and privateers with their prizes, and to close them against those of any power at war with France, except when driven by stress of weather, and then "all proper means shall be vigorously used that they go out and retire from thence as soon as possible";[1] *thirdly*, according to French construction, to allow French privateers "to fit their ships, to sell what they have taken, or in any other manner whatsoever to exchange their ships, merchandise, or any other lading," while privateers in enmity with France are forbidden even to victual in ports of the United States.[2] As if to round and complete these engagements, it was further stipulated on the part of the United States, in a Consular Convention, which, after many perplexities of diplomacy baffling the tried skill of Franklin, was finally signed by Mr. Jefferson, in 1788, as a postscript to the earlier treaties, that French consuls and vice-consuls in the United States should have power and jurisdiction on board French vessels in civil matters, with the entire inspection over such vessels, their crews, and the changes and substitutions there to be made.[3]

Such, briefly recited, were the solemn engagements of the United States, sanctioned by treaties, as the price of independence. So long as France remained at peace with all the world, especially with Great Britain, these engagements slept unnoticed, but ready, at the first blast of war, to spring into life. At length the blast was heard, perhaps as never before in human history, echoing from capital to capital, and sounding a crusade of monarchical

[1] Article XVII.: United States Statutes at Large, Vol. VIII., p. 22.
[2] Article XXII.: Ibid., p. 24.
[3] Article VIII.: Ibid., p. 112.

Europe against republican France. Of all the foreign ministers at Paris, the minister of the United States alone remained: the rest had fled.

The minister of the United States saw the danger lowering upon his own country. In a letter to the Secretary of State, dated December 21, 1792, after presenting a rapid sketch of the rising of Europe against France, he adds: "The circumstance of a war with Britain becomes important to us in more cases than one"; and he then alludes to "the question respecting the *guaranty* of American possessions, especially if France should attempt to defend her islands."[1] Notoriously, Gouverneur Morris sympathized little with the French Republic, but, against all arguments for non-compliance with our original engagements, because the Government with which they were made had ceased to exist, his sensitive nature broke forth in the "wish that all our treaties, however onerous, may be strictly fulfilled according to their true intent and meaning," which he followed in language foreign to the phrases of diplomacy, by picturing "the honest nation as that which, like the honest man,

> 'Hath to its plighted faith and vow forever firmly stood;
> And though it promised to its loss, yet makes that promise good.'"[2]

In harmony with this exclamation of the plenipotentiary are the words of Vattel, an authority much quoted at the time: "To refuse an ally the succors we owe him, without any good ground of dispensation, is doing him an injury, ... and there being a natural obligation to repair the damage caused by our fault, and especially by our injustice, we are bound to indemnify an ally

[1] American State Papers, Foreign Relations, Vol. I. p. 347.
[2] Ibid.

for all the losses he may have sustained from our unjust refusal."[1]

Since the signature of the treaties times had changed, and men had changed with them. There was no bad faith on either side, in the ordinary sense of the term, but intervening events and exigencies of self-defence had driven each into unexpected inconsistencies of conduct. If on one side there was neglect of original engagements, there was on the other equal neglect of international duties. The tornado in mad career uprooted old landmarks, and each was striving to find new lines of reciprocal relations. Franklin, signing the "guaranty," did not expect so soon to call down upon his country the lightnings of an embattled world; nor did France, while formally conceding neutral rights on the ocean and assuring our national independence, expect so soon to become the plunderer of our commerce. But the great tragedy would have been less complete, if its domineering Nemesis had suffered the two republics to dwell in harmony together. They were whirled, on each side, into those questionable acts out of which have sprung the claims and counter-claims now under consideration.

A new French minister was at hand, accredited to President Washington, with fresh instructions. Differences on the obligations of the guaranty appeared in the Cabinet, — some holding that no necessity for decision existed, as France had made no demand, — and others, that, the Treaty of Alliance being plainly defensive, the guaranty did not apply to a war begun by France. After ample discussion, the Proclamation of Neutrality was adopted, April 22, 1793, destined to become a turning-

[1] Le Droit des Gens, Liv. III. ch. 6, § 94.

point in our history. Chief Justice Marshall, whose opportunities of information were unquestionable, lets us know that the Proclamation "was intended to prevent the French minister from demanding *the performance of the guaranty contained in the Treaty of Alliance.*"[1] But before the Proclamation reached France, orders were issued there for the capture and confiscation of enemy goods on board neutral vessels; whereas it was stipulated with the United States that free ships should make free goods; so that, even if the denial of the guaranty was wrong, and the Proclamation, according to French accusation, "insidious," the United States were not the first to offend.

On the day of the Proclamation came news by the journals that Genet, the new French minister, had landed in South Carolina, where, amid the darkest days of the Revolution, Lafayette had also first landed. Full of conviction that France had only to make herself heard in order to be sustained, Genet exalted himself conspicuously above the Government. By instructions from the Executive Council of the French Republic, dated 17th of January, 1793, he was enjoined "to penetrate profoundly the sense of the treaties of 1778, and to watch over the articles favorable to the commerce and navigation of the United States, and to make the Americans consider engagements which might appear onerous *as the just price of the independence which the French nation had secured to them.*" Not content with existing safeguards, the new minister was to negotiate a supplementary treaty, to fix more surely "the *reciprocal guaranty* of the possessions of the two powers."[2] In this spirit he commenced a

[1] Report of Mr. Livingston on the French Spoliations, February 22, 1830: Senate Documents, 21st Cong. 1st Sess., No. 68, p. 5.

[2] Gebhardt's American and French State Papers, Vol I. pp. 9, 10.

turbulent career, charging offensively that the President, before knowing what the minister had to communicate from the French Republic, was in a hurry "to proclaim sentiments on which decency and friendship should at least have drawn a veil," — that he "took on himself to give to our treaties arbitrary interpretations absolutely contrary to their true sense," and that "he left no other indemnification to France for the blood she spilt, for the treasure she dissipated, in fighting for the independence of the United States, but the illusory advantage of bringing into their ports the prizes made on their enemies without being able to sell them," — and that the Secretary of War, on his communication of the wish of the Windward Islands "to receive promptly some fire-arms and some cannon, which might put into a state of defence *possessions guarantied by the United States*, had the front to answer, with an ironical carelessness, that the principles established by the President did not permit him to lend so much as a pistol."[1] In another letter, the French minister, under date of June 8, 1793, requires that "the Federal Government should observe the public engagements contracted, and give to the world the example of a true neutrality, which does not consist in the cowardly abandonment of friends at the moment when danger menaces."[2] And in still another letter, dated June 22, 1793, he declares that "it is in the conventional compacts, collectively, that we ought to seek contracts of alliance and of commerce simultaneously made, if we wish to take their sense and interpret faithfully the intentions of the people who

[1] Letter to Mr. Jefferson, September 18, 1793: American State Papers, Foreign Relations, Vol. I. pp. 173, 174.

[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 193.

cemented them, and of the men of genius who dictated them." [1] All of which was followed by another letter, dated November 14, 1793, in which the minister says categorically: "I beg you to lay before the President of the United States, as soon as possible, the decree and the inclosed note, and to obtain from him the earliest decision, *either as to the guaranty I have claimed the fulfilment of for our colonies*, or upon the mode of negotiation of the new treaty I was charged to propose to the United States, and which would make of the two nations but one family." [2] At last Genet was recalled, but the question of our engagements with France could not be dismissed. It was more menacing than any minister. Without it all the turbulence of Genet would have been as the idle wind.

And yet, for a while, each party seems to have practised a certain reserve. Genet stormed, but the Government at home was tranquil. The "guaranty" was suspended, even in discussion. France forbore to press it, and the United States were happy to avoid the overshadowing question. The Secretary of State, in instructions to Mr. Monroe, dated June 10, 1794, while "insisting upon compensation for the captures and spoliations of our property and injuries to the persons of our citizens by French cruisers," was careful to add: "If the execution of the *guaranty* of the French islands by force of arms should be propounded, you will refer the Republic of France to this side of the water." [3] Mr. Monroe, in his correspondence, under date of September 15, 1794, says: "This Republic had declined calling on us to execute the guaranty, from a spirit of magnanimity,

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 199.
[2] Ibid., p. 231.
[3] Ibid., pp. 78, 79.

and strong attachment to our welfare"; but he reveals his anxiety lest an attempt to press our case "might give birth to sentiments of a different kind, and *create a disposition to call on us to execute that of the Treaty of Alliance.*"[1] In another letter, dated November 7, 1794, describing an interview with the very able Diplomatic Committee, our plenipotentiary confesses the embarrassment he encountered, when M. Merlin three times asked, "Do you insist upon *our* executing the treaty?" and he gives his reply, that he "was not instructed by the President to insist on it, nor did he insist on it"; and he avows that in his opinion such insistence would have been impolitic, as "exciting a disposition to press us on other points, *upon which it were better to avoid any discussion.*"[2] There is other testimony of this nature, unnecessary to produce. Suffice it to say, that for some time there was a lull, soon to be followed by a storm.

French forbearance is more remarkable, when it is considered that the occasion for the "guaranty" had begun to be urgent. Even before Howe's great victory of June, over the French fleet, the British navy swept the sea, rendering all French possessions insecure. Martinique, San Domingo, St. Lucia, and Guadeloupe were lost to the Republic in the spring of 1794, so that the British historian has written: "Thus, in little more than a month, the French were entirely dispossessed of their West India possessions, with hardly any loss to the victorious nation."[3] But the "guaranty" was invoked by the impatient colonists, who, without waiting the slower movement of the French Republic, appealed

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 84.
[2] Ibid., pp. 86, 87.
[3] Alison, History of Europe (Edinburgh, 1844), Vol. II. p. 767, Ch. 16.

directly to our Congress for "divers necessary succors, of provision, ammunition, and even men," and in impassioned language pictured "England come to take possession of the French colonies in the name of a king without dominions, and North America, witness to that political perfidy, not able to lend a helping hand against an unworthy treachery."[1] The French Government at home did not share the fury of the colonists. According to Mr. Monroe, in his letter of December 2, 1794, whatever may have been their desires at a previous stage, they did not now wish us to "embark with them in the war," but "would rather we would not, from an idea it might diminish their supplies from America," and "if the point depended on them, they would leave us to act in that respect according to our own wishes"; at the same time they looked to us for "aid in the article of money."[2] This moderation, although a temporary waiver, was in no respect a renunciation of rights. According to Mr. Jefferson, in a letter written some months after his retirement from the Cabinet, and addressed to Mr. Madison, under date of April 3, 1794, the "guaranty" was still obligatory. "As to the guaranty of the French islands," he wrote, "whatever doubts may be entertained of the moment at which we ought to interpose, yet *I have no doubt but that we ought to interpose at a proper time,* and declare both to England and France that these islands are to rest with France, and that we will make *a common cause* with the latter for that object."[3] Such was American testimony.

[1] Commission of Guadeloupe to the Congress of the United States, November 6, 1793: American State Papers, Foreign Relations, Vol. I. p. 326.

[2] American State Papers, Foreign Relations, Vol. I. p. 688.

[3] Writings, Vol. IV. pp. 102, 103.

The West India islands were lost without causing an apparent smart at home; but it was different, when the news came of Mr. Jay's negotiation in England. The Republic was stung to the quick, and, when the treaty became known, did not conceal its indignant anger. In a formal note, dated March 9, 1796, it set forth its complaints, dwelling especially upon the "inexecution of the treaties," and upon the formation of the recent treaty with Great Britain, in which the United States "knowingly and evidently sacrificed their connections with the Republic."[1] In conversation with Mr. Monroe, the French minister said "that France had much cause of complaint against us, independently of our treaty with England, but that by this treaty ours with them was annihilated."[2] The year closed with the recall of Mr. Monroe, and with a notice from the French Government "that it will no longer recognize nor receive a Minister Plenipotentiary from the United States, *until after a reparation of the grievances demanded of the American Government,* and which the French Republic has a right to expect"; and then, adding ingratitude to the list of our offences, it declared an equal expectation "that the successors of Columbus, Raleigh, and Penn, always proud of their liberty, will never forget that *they owe it to France.*"[3] Meanwhile, M. Adet, the French plenipotentiary in Philadelphia, was addressing our Government in similar strain, calling for the discharge of our engagements, and heaping reproaches: "The undersigned, Minister Plenipotentiary of the French Republic, now fulfils to the Secretary of State

[1] American State Papers, Foreign Relations, Vol. I. pp. 658, 659.
[2] Mr. Monroe to the Secretary of State, February 20, 1796: Ibid, p. 731.
[3] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 150.

of the United States a painful, but sacred duty. *He claims, in the name of American honor, in the name of the faith of treaties, the execution of that contract which assured to the United States their existence,* and which France regarded as the pledge of the most sacred union between two people the freest upon earth." And he charges the Government of the United States with "sacrificing France to her enemies," "forgetting the services that she had rendered it," and "throwing aside the duty of gratitude, as if ingratitude was a Governmental duty."[1] From this time forward the claims of the United States never failed to encounter the counter-claims of France.

The mutual coquetry which characterized the two Governments during the mission of Mr. Monroe gave way to mutual recrimination and repulsion, where France took the lead. M. Adet was recalled from Philadelphia. Mr. Pinckney was sent away from Paris. Besides the earlier decree, announcing that the Republic would treat all neutrals in the same manner as they suffered the English to treat them, other fatal blows were now dealt at our commerce, letting loose a new brood of spoliations destined to swell the catalogue of our claims, by a decree pronouncing the stipulations of the treaty of 1778 which concerned the neutrality of the flags altered and suspended in their most essential points by the treaty with England, greatly enlarging the list of contraband, declaring Americans in the service of England pirates, and authorizing the seizure of all American vessels without a *rôle d'équipage,* which, notoriously, no American vessel ever carried, so that practically

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 354, 367.

our flag was delivered over to the depredations of every French cruiser.[1]

Then came that plenipotentiary triumvirate, Messrs. Pinckney, Marshall, and Gerry, who were particularly instructed by our Government, while urging the multiplied claims of our citizens, already valued at "more than twenty millions of dollars," to propose "a substitute for the reciprocal guaranty," or, "if France insists on the mutual guaranty, to aim at some modification of it," — "instead of troops or ships of war, to stipulate for a moderate sum of money or quantity of provisions, at the option of France: the provisions to be delivered at our own ports, in any future *defensive* wars; the sum of money, or its value in provisions, not to exceed two hundred thousand dollars a year, during any such wars."[2] Here was recognition of the "guaranty," and a sum offered for release from its requirements. But the French Republic, drunk with triumph and maddened with anger, was in no mood for negotiation. It met our plenipotentiaries with an intrigue already mentioned as unparalleled in diplomacy, and, after tolerating their presence for a while at Paris, without conceding an official reception, sent them away, disappointed and dishonored. Even in the informal relations which were permitted, Talleyrand, in the name of the Republic, advanced and vindicated the counter-claims of France. Without dwelling at length on his argument, it is enough to quote certain words in a letter to Mr. Gerry, of June 10, 1798: "*The French Republic desires to be restored to the rights which its treaties with your Republic confer upon it, and through those means it desires to as-*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 163.
[2] Ibid., pp. 430, 457, 458.

sure yours. You claim indemnities; it equally demands them; and this disposition, being as sincere on the part of the Government of the United States as it is on its part, will speedily remove all the difficulties."[1] Thus plainly was the case stated. It was not denied that indemnities were due to the United States, but it was insisted that they were also due to France.

The two countries, once allies, were now in the most painful relations. Washington was no longer President; but his Farewell Address, in some of its most important parts, was evidently inspired by the counter-claims of France, especially when he warned his fellow-countrymen "to steer clear of *permanent alliances* with any portion of the foreign world, *so far as we are now at liberty to do it*," — "to have with foreign nations as little *political* connection as possible," — "to be constantly awake against the insidious wiles of foreign influence," — and then asked in well-known words, "Why quit our own, to stand upon foreign ground? Why, by *interweaving our destiny with that of any part of Europe*, entangle our peace and prosperity in the toils of European ambition, rivalship, interest, humor, or caprice?"[2] In these remarkable words, where the same tone, if not the same lesson, recurs, we discern the undissembled anxieties of the hour. By the guaranty and other stipulations of 1778, our peace and prosperity had been entangled, even if our destiny had not been interwoven, in distant toils. France was urgent and brutal. War seemed impending. At last another triumvirate of plenipotentiaries, Messrs. Ellsworth, Davie, and Murray, was commissioned to attempt again the adjustment of com-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 529.
[2] Writings, ed. Sparks, Vol. XII. pp. 230–232.

plications that had thus far baffled the wisdom of Washington; but compensation for the "individual" claims of American citizens was required as an indispensable condition.

Such are the counter-claims of France in origin and history. And now again we are brought to the very point where the Committee had arrived in exhibiting the claims of our citizens. The plenipotentiaries on each side have met to negotiate, while the First Consul has gone to Marengo. On each side they are equally tenacious. There is a dead-lock. How this was overcome belongs to the next chapter.

III.

ADJUSTMENT BETWEEN THE UNITED STATES AND FRANCE BY THE SET-OFF AND MUTUAL RELEASE OF CLAIMS AND COUNTER-CLAIMS.

THE rules of duty and of conduct between individuals are applicable also to nations, and the proceedings on this occasion illustrate this principle. The two parties could not agree. Clearly, then, for the sake of harmony, it was essential to postpone both claims and counter-claims, for some future negotiation, or, if this were not done, to treat them as a set-off to each other. Such, unquestionably, would have been the action between individuals. But the history of this negotiation shows the adoption of these two modes successively. Postponement was first tried, but it gave way at last to *set-off*, by virtue of which the *international* controversy was closed. This conclusion was reached slowly and by stages, as is seen in a simple narrative of the negotiation.

The plenipotentiaries on each side evinced a disposition to provide for reciprocal claims; but the claims specified by the American plenipotentiaries were those of "*citizens* of either nation," while those specified by the French plenipotentiaries were those which "either nation may make for *itself* or for any of its citizens."[1] In this difference of specification was the germ of the antagonism soon developed, especially when the American plenipotentiaries proposed to recognize the treaties and Consular Convention as existing only to July 7, 1798,[2] the date of the statute by which Congress undertook to annul them. This distinction seems to have been unnecessary, for the French spoliations were clearly as much in contravention of the Law of Nations as of the treaties. But it furnished the French plenipotentiaries opportunity of declaring, under date of May 6, 1800, that "the mission of the Ministers Plenipotentiary of the French Republic has pointed out to them the Treaties of Alliance, Friendship, and Commerce, and the Consular Convention, *as the only foundations of their negotiations*"; that "upon these acts has arisen the misunderstanding, and it seems proper that upon these acts union and friendship should be established."[3] Thus were the treaties put forward by France; and our plenipotentiaries, writing to their own Government, May 17, 1800, represent her as persistent: "Our success is yet doubtful. The French think it hard to indemnify for violating engagements, *unless they can thereby be restored to the benefits of them*."[4] But on this point our Government was inexorable.

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 581.
[2] Ibid., p. 587. [3] Ibid., p. 591. [4] Ibid., p. 607.

The return of the First Consul from Italy was signalized by fresh instructions to the French plenipotentiaries, who proceeded to declare, under date of August 11, 1800, that "the treaties which united France and the United States are not broken," and that their first proposition is "to stipulate a full and entire recognition of the treaties, and the reciprocal engagement of compensation for damages resulting on both sides from their infraction." Here, again, the "individual" claims of citizens of the United States were doomed to encounter the "national" claims of France. And this communication concluded with a formal proposition in these words: "Either the ancient treaties, with the privileges resulting from priority and the stipulation of reciprocal indemnities, or a new treaty, assuring equality without indemnity."[1] Thus it stood: Claims and Counter-Claims.

The American plenipotentiaries were driven to choose between abandonment of the negotiations and abandonment of their instructions. It was clear, from French persistency, that the treaties, with all the counter-claims, must be recognized, or the indemnities, with all the claims, must be sacrificed. The American plenipotentiaries then took the extraordinary responsibility of a proposition which discloses not only their earnest desire for a settlement, but also their sense of pressure from France. It was nothing less than a price, in money, for release from certain stipulations; but this was to be accomplished by "a reciprocal stipulation for *indemnities limited to the claims of individuals.*"[2] The French plenipotentiaries, in reply, insisted upon recognition of

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 616–618.
[2] Ibid., p. 625.

the treaties in general terms, and also the rights of their privateers in our ports; yet they offered to commute the guaranty for a sum of money.[1] The American plenipotentiaries, hampered by the recent treaty with Great Britain, were obliged to reject this proposition; but, after requiring the satisfaction of "individual" claims, they offered, in general terms, that "the former treaties be renewed and confirmed, and have the same effect as if no misunderstanding between the two powers had intervened"; and further, that, *in consideration of eight millions of francs,* the United States should be released from the guaranty, and also from those other articles relating to prizes which had caused so much embarrassment.[2] Then the French plenipotentiaries assumed a new position in the following reply, September 4, 1800.

"*To the Ministers Plenipotentiary of the United States at Paris:* —

"We shall have the right to take our prizes into the ports of America.

"A commission shall regulate the indemnities which either of the two nations may owe to the citizens of the other.

"*The indemnities which shall be due by France to the citizens of the United States shall be paid for by the United States. And in return for which, France yields the exclusive privilege resulting from the 17th and 22d articles of the Treaty of Commerce, and from the rights of guaranty of the 11th article of the Treaty of Alliance.*

"BONAPARTE.
"C. P. CLARET-FLEURIEU.
"ROEDERER."[3]

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 627, 628.
[2] Ibid., p. 629.
[3] Ibid., p. 630.

Here was the first proposition of *set-off*. On the one side were "indemnities due by France to citizens of the United States," and on the other side were "privileges and rights" under the treaties; but it will not fail to be remarked that *the indemnities due by France were to be paid by the United States.* This proposition proceeded on the idea that the counter-claims of France were at least equal in value to the claims of the United States, and that the release of the former was a sufficient consideration for the assumption of the latter. But this was entirely beyond the powers of the American plenipotentiaries, who, in their reply, pronounced it "inadmissible."[1] It revealed the desire of France to escape any payment of money, as only a few days later was openly avowed by the French plenipotentiaries, "giving as one reason the utter inability of France to pay, in the situation in which she would be left by the present war."[2] This declared inability served to explain the difficulties encountered by the American plenipotentiaries. Evidently there was a "foregone conclusion" against any payment by France. The counter-claims furnished the needed *substitute.* But, as these were "national," while the claims of the United States were "individual," there could be no just *set-off* between them, unless the American Government assured to its citizens the payment of what was due from France, according to the proposition of the French plenipotentiaries.

The American plenipotentiaries were disheartened. Nothing in their instructions enabled them to meet the new and unexpected turn of affairs. The treaty

[1] Senate Documents. 19th Cong. 1st Sess., No. 102, p. 631.

[2] Journal of American Plenipotentiaries, September 12, 1800: Ibid., p. 633.

they had striven for seemed to elude their grasp. In their journal, under date of September 13, 1800, is the record, that, "being now convinced that the door was perfectly closed against all hope of obtaining indemnities with any modifications of the treaties, it only remained to be determined whether, under all circumstances, it would not be expedient to attempt *a temporary arrangement*."[1] The French plenipotentiaries did not consider this proposition, without insisting, "first, that a stipulation of indemnities carries with it the full and entire admission of the treaties, and, secondly, that the relinquishment of the advantages and privileges stipulated by the treaties, by means of the reciprocal relinquishment of indemnities, would prove to be the most advantageous arrangement, and also the most honorable to the two nations."[2] Here, again, was a proposition of *set-off*, which was repeated in other different forms.

The dead-lock which clogged the negotiation, even at the beginning, was now complete. The American plenipotentiaries announced at home that they were driven to quit France, or to find some other terms of adjustment.[3] The latter alternative prevailed, and the negotiation was renewed, with the understanding that the parties put off to another time the discussion of indemnities and the treaties.[4] The other questions furnished no ground of serious controversy; and the conferences proceeded tranquilly, from day to day, till September 30, 1800, resulting in what was entitled a

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 634.
[2] Ibid., pp. 635, 636.
[3] Letter to Secretary of State, October 4, 1800: Ibid., p. 644.
[4] Ibid., p. 637.

"*Provisional* Treaty." The title revealing its temporary character was subsequently changed, at the request of the French plenipotentiaries, to that of "Convention," which it now bears in the statute-book.

The Convention, after declaring in its first article that "there shall be a firm, inviolable, and universal peace, and a true and sincere friendship, between the French Republic and the United States of America," proceeds to stipulate as follows.

"ART. II. The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the Treaty of Alliance of 6th February, 1778, the Treaty of Amity and Commerce of the same date, and the Convention of 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon these points, the said treaties and convention shall have no operation, and the relations of the two countries shall be regulated as follows."[1]

Here the disagreement with regard to the early treaties and the indemnities mutually due or claimed is specifically declared, and it is then provided that "*the parties* will negotiate further on these subjects at a convenient time," — meaning, of course, that hereafter, at a more auspicious moment, and with other plenipotentiaries, "the parties" will attempt to reconcile this disagreement. The whole subject, with its seven years of controversy and heart-burning, was postponed. Claims and counter-claims were left to sleep, while the spirit of peace descended upon the two countries.

[1] United States Statutes at Large, Vol. VIII. p. 178.

The Convention was signed at Morfontaine, the elegant country home of Joseph Bonaparte, and the occasion was turned into a festival, — illustrated afterwards by the engraving of Piranesi, — where nothing was wanting that hospitality could supply. The First Consul was there, with his associates in power; also Lafayette, rescued from his Austrian dungeon and restored to France; and there also were the plenipotentiaries of both sides, with American citizens then in France, all gathered in brilliant company to celebrate the establishment of concord between the two republics.[1] The First Consul proposed as a toast, "*To the manes of the French and the Americans who died on the field of battle for the independence of the New World*"; so that even at this generous festival, to grace a reconciliation founded on the postponement of claims and counter-claims, the youthful chief, whose star was beginning to fill the heavens, proclaimed the undying obligations of the United States to France. This strain has been adopted by M. Thiers, who, after referring to this convention as the first concluded by the Consular Government, says: "It was natural that the reconciliation of France with the different powers of the globe should begin with *that republic to which she had in a measure given birth.*" The great historian, while thus recording our obligations to France, shows how claims and counter-claims had been postponed. "The First Consul," he says, "had allowed the difficulties relative to the Treaty of Alliance of the 6th of February, 1778, to be adjourned; but, on the other hand, he had required the adjournment of the claims of the Americans relative to captured vessels."[2]

[1] Mémoires du Roi Joseph (2me édit.), Tom. I. p. 94.
[2] Histoire du Consulat et de l'Empire, Tom. II. Liv. 7.

In this summary the stipulations at the signature of the Convention are accurately stated. Though imperfect, it was the first in that procession of peace, embracing Lunéville, Amiens, and the Concordat, which for a moment closed the Temple of Janus, whose gates had been left open by the Revolution in France.

The ratification by the First Consul followed the celebration at Morfontaine, so that the Convention, with its postponement of mutual claims, was definitely accepted by France. It was otherwise in the United States, where the result did not find favor. The postponement of a controversy is not a settlement, and here was nothing but postponement, leaving the old cloud hanging over the country, ready to burst at the motion of England or France. It was important that the early treaties, with their entangling engagements, should cease, even as a subject of future negotiation. In this spirit, the Senate, on the submission of the Convention for ratification, expunged the second article, providing that "the parties will negotiate further on these subjects," and limited the Convention to eight years. On the 18th of February, 1801, President Adams, by proclamation countersigned by John Marshall, as Secretary of State, published the Convention as duly ratified, "saving and excepting the second article," which was declared "to be expunged, and of no force or validity."[1] The precise effect of this proceeding was not explained, and it remained to see how it would be regarded in France.

Were the claims on France abandoned? This was the question which occupied the attention of our minister, Mr. Murray, when charged to exchange with France

[1] United States Statutes at Large, Vol. VIII. p. 192.

the ratifications of the Convention as amended by the Senate. Reporting to the Government at home his conference with the French plenipotentiaries, he said, "I fear that they will press an article of formal abandonment on our part, *which I shall evade.*"[1] He hoped to keep still another chance for indemnities. On the other hand, the French plenipotentiaries feared that an unconditional suppression of the second article would leave them exposed to the claims of the United States without chance for their counter-claims; but they did not object to a mutual abandonment of indemnities, which Mr. Murray admitted would "always be *set off* against each other."[2] At last the conclusion was reached, and on the 31st of July, 1801, the Convention was ratified by the First Consul, with the limitation to eight years, and with the retrenchment of the second article, according to the amendment by the Senate, the whole with a proviso by the First Consul, "THAT BY THIS RETRENCHMENT THE TWO STATES RENOUNCE THE RESPECTIVE PRETENSIONS WHICH ARE THE OBJECT OF THE SAID ARTICLE."[3] Such were the important words of final settlement. What had been left to inference in the amendment of the Senate was placed beyond question by this French proviso. Claims and counter-claims were not merely suspended; they were formally abandoned. The Convention, with this decisive modification, was submitted to the Senate by President Jefferson, and again ratified by a vote of twenty-two yeas to four nays. On the 21st of December, 1801, it was promulgated by the President in the usual form, with its

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 666.
[2] Ibid., p. 675.
[3] United States Statutes at Large, Vol. VIII. p. 194.

supplementary proviso, and all persons were enjoined to observe and fulfil the same, "and every clause and article thereof." [1]

One aspect of this result cannot fail to arrest attention. Here was a release of all outstanding obligations of the United States under those famous treaties which assured National Independence. The joy with which those heralds of triumph were first welcomed in camp and Congress has been portrayed; and now a kindred joy prevailed, when the country, anxious and sorely tried, was at last set free from their obligations, and American commerce, venturing forth again from its banishment, brought back its treasures to pour them into the lap of the people. Strange fate! There was joy at the birth of these treaties, and joy also at their death. But it was because their death had become to us, like their birth, a source of national strength and security.

Thus closed a protracted controversy, where each power was persistent to the last. Nothing could be more simple than the adjustment, and nothing more equitable, *if we regard the two Governments only.* The claims of each were treated as a *set-off* to the claims of the other, and *mutual releases* were interchanged, so that each, while losing what it claimed, triumphed over its adversary. But the triumph of the United States was at the expense of American citizens. Nothing is without price; and new duties, originating in this triumph, sprang into being.

[1] United States Statutes at Large, Vol. VIII. p. 196.

IV.

ASSUMPTION OF CLAIMS BY THE UNITED STATES, AND SUBSTITUTION OF UNITED STATES FOR FRANCE.

THEN came the assumption by our Government of the original obligations of France, and its complete *substitution* for France *as the responsible debtor.* This liability was distinctly foreseen by the American plenipotentiaries, Messrs. Pinckney, Marshall, and Gerry, as appears in their words, under date of October 22, 1797: "We observed to M. Bellamy, that none of our vessels had what the French termed a *rôle d'équipage,* and that, if we were to surrender all the property which had been taken from our citizens in cases where their vessels were not furnished with such a rôle, *the Government would be responsible to its citizens for the property so surrendered,* since it would be impossible to undertake to assert that there was any plausibility in the allegation that our treaty required a *rôle d'équipage.*"[1] This admission, so important in this discussion, was so clearly in conformity with correct principles, that it was naturally made, even without special instructions.

Had the claims been "national" on each side, no subsequent question could have occurred, for each would have extinguished the other in all respects forever. It was the peculiarity of this case, that on one side the claims were "national," and on the other side "individual." But a *set-off* of "individual" claims against "national" claims must, of course, leave that Government responsible which has appropriated the

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 467.

"individual" claims to this purpose. The set-off and mutual release are between nation and nation; but if the claims on one side are only "individual," and not "national," the nation which by virtue of this consideration is released from "national" obligations must be *substituted* for the other nation as debtor, so that every "individual" with claims thus appropriated may confidently turn to it for satisfaction. On this point there can be no doubt, whether we regard it in the light of common sense, reason, duty, Constitution, or authority.

1. According to *common sense*, any "individual" interest appropriated to a "national" purpose must create a debt on the part of the nation, still further enhanced, if, through this appropriation, the nation is relieved from outstanding engagements already the occasion of infinite embarrassment, and hanging like a drawn sword over the future.

2. According to *reason*, any person intrusted with the guardianship of particular interests becomes personally responsible with regard to them, especially if he undertakes to barter them against other interests for which he is personally responsible. Thus, an attorney, sacrificing the claims of his clients for the release of his own personal obligations, becomes personally liable; and so also the trustee, appropriating the trust fund for any personal interest, becomes personally liable. All this is too plain for argument; but it is applicable to a nation as to an individual. In the case now before your Committee, our Government was attorney to prosecute "individual" claims of citizens, and also trustee for their benefit, to watch and protect their interests; so that it was bound to all the responsibilities of at-

torney and trustee, absolutely incapacitated from any act of personal advantage, and compelled to regard all that it obtained, whatever form of value it might assume, whether money or release, as a trust fund for the original claimants.

3. *Duty*, also, in harmony with reason, enjoins upon Government the protection of citizens against foreign spoliations and the prosecution of their claims to judgment. Such are powerless as "individuals." Their claims are effective only when adopted by the nation. This duty, so obvious on general principles, was reinforced in the present case by the special undertaking of Mr. Jefferson, already adduced, when he announced that he had it "in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas or in foreign countries."[1] Such a duty, thus founded, and thus openly assumed, could not be abandoned, on any inducement proceeding from France, without a corresponding responsibility toward those citizens whose interests were allowed to suffer. A waiver of national duty, especially where made for the national benefit, must entail national obligation.

4. The *Constitution* also plainly requires what seems so obvious to common sense, reason, and duty, when it declares that "private property shall not be taken for public use *without just compensation*." Here "private property," to a vast amount, was taken for "public use," involving the peace and welfare of the whole country; and down to this day the sufferers are petitioning Con-

[1] Circular, August 27, 1793: Senate Documents, 19th Cong. 1st Sess., No. 102, p. 217.

gress for that "just compensation" solemnly promised by the Constitution.

5. *Public law* is also in harmony with the Constitution. According to Vattel, the sovereign may, in the exercise of his right of eminent domain, dispose of the property, and even the person, of a subject, by treaty with a foreign power; "but," says this eminent authority, "as it is for the public advantage that he thus disposes of them, the state is bound to indemnify the citizens who are sufferers by the transaction."[1] Words more applicable to the present case could not be employed.

6. The authority of great names confirms this liability. Among those who took part in the negotiations with France, none but Mr. Pickering and Chief Justice Marshall still lingered on the stage when the subject was finally pressed upon Congress. Mr. Pickering was Secretary of State under Washington and Adams, and drew the instructions. His testimony is explicit. Without giving his statement at length, it will be enough to quote these words, in a letter dated November 19, 1824:—

"Thus the Government *bartered* the *just claims* of our merchants on France, to obtain a relinquishment of the French claim for a restoration of the old treaties, especially the burdensome Treaty of Alliance, by which we were bound to guaranty the French territories in America. On this view of the case, it would seem *that the merchants have an equitable claim for indemnities from the United States.* . . . . It follows, then, that, if the relinquishment had not been made, the present French Government would be responsible. Consequently, the relinquishment by our own

[1] Le Droit des Gens, Liv. IV. ch. 2, § 12.

Government having been made in consideration that the French Government relinquished its demand for a renewal of the old treaties, *then it seems clear, that, as our Government applied the merchants' property to buy off those old treaties, the sums so applied should be reimbursed.*" [1]

Chief Justice Marshall, who was one of the plenipotentiaries that attempted to secure payment from France, and afterward, as Secretary of State, countersigned the proclamation of President Adams first promulgating the Convention of 1800, has borne testimony similar to that of Mr. Pickering. In conversation with Mr. Preston, of South Carolina, he said, that, "having been connected with the events of that period, and conversant with the circumstances under which the claims arose, *he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the sufferers by the French spoliations.*" [2]

Hon. B. Watkins Leigh, an ancient Senator from Virginia, relates that the same eminent authority said in his presence, "distinctly and positively, that *the United States ought to make payment of these claims.*" This declaration made a particular impression upon Mr. Leigh, because he had been unfavorable to the claims.

7. The obligation of the United States may be inferred also from *the declared justice* of the claims which had been renounced. On this point the authority is equally explicit.

Of course, in urging them upon France, earnestly and

[1] Letter to James H. Causten: Speech of Hon. John M. Clayton in the Senate of the United States, April 23 and 24, 1846, Appendix, No. 2: Congressional Globe, 29th Cong. 1st Sess., Appendix, pp. 863, 864.

[2] William C. Preston to James H. Causten, January 29, 1844: Mr. Clayton's Speech, Appendix, No. 3: Ibid., p. 864.

most assiduously, by successive plenipotentiaries, there was a plain adoption of them as just. But even after their abandonment they continued to be recognized as just.

Hon. Robert R. Livingston, plenipotentiary at Paris, in his correspondence shortly after the abandonment, shows his discontent. In a note to the Minister of Exterior Relations he speaks compendiously of "the payment for illegal captures, with damages and indemnities on one side, and the renewal of the Treaty of 1778 on the other, as of *equivalent value*."[1] And in a despatch, under date of January 13, 1802, he says he has "always considered the sacrifices we have made of an immense claim as *a dead loss*."[2] But this "dead loss" fell upon "individuals," and not upon the "nation."

Mr. Madison, as Secretary of State, in a despatch to Hon. Charles Pinckney, our minister at the court of Spain, under date of February 6, 1804, upholds the justice of the claims in significant words: —

> "The claims from which France was released were *admitted by France*, and the release was for *a valuable consideration* in a correspondent release of the United States from certain claims on them."[3]

Thus, according to official declaration, the claims of American citizens were "admitted by France," but they were released for *a valuable consideration* which first inured to the benefit of the Government of the United States. *Equitably, that valuable consideration must belong to the claimants.*

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 717.
[2] Ibid., p. 704.
[3] Ibid., p. 795.

Mr. Clay, as Secretary of State under John Quincy Adams, made a report, which had the sanction of the latter, where he fully affirms the justice of the claims: —

"The pretensions of the United States arose out of the spoliations, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the Treaty of Alliance of the 6th February, 1778, the Treaty of Amity and Commerce of the same date, and the Convention of the 14th of November, 1788. Whatever obligations or indemnities from those sources either party had a right to demand were respectively waived and abandoned, *and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions.* What was the value of the obligations and indemnities so reciprocally renounced can only be matter of speculation."[1]

Mr. Clay concludes by declaring that the Senate, to which his report is addressed, was most competent to determine how far the appropriation of the indemnities due to American citizens was "a public use of private property, within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."

There is one other authority, of commanding character, not to be forgotten. It is Hon. Edward Livingston, jurist, statesman, and diplomatist, who, though not engaged in the negotiations, knew them as contemporary, and afterward, as Senator, made a report, accepted ever since as an authentic statement of the whole case, in which he says: —

"The Committee think it is sufficiently shown that the claim for indemnities was surrendered *as an equivalent* for

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 7.

the discharge of the United States from its heavy national obligations, and for the damages that were due for their preceding non-performance of them. If so, can there be a doubt, independent of the constitutional provision, that the sufferers are entitled to indemnity? Under that provision *is not this right converted into one that we are under the most solemn obligation to satisfy?* . . . . To lessen the public expenditure is a great legislative duty; to lessen it at the expense of justice, public faith, and constitutional right would be a crime. Conceiving that all these require that relief should be granted to the petitioners, they pray leave to bring in a bill for that purpose."[1]

This list of authorities may be closed with that of the Emperor Napoleon, who, at St. Helena, dictated to Gourgaud the following testimony:—

"The suppression of this article [2d of the Convention] at once put an end to the privileges which France had possessed by the Treaty of 1778, *and annulled the just claims which America might have made for injuries done in time of peace.* This was exactly what the First Consul had proposed to himself, in fixing these two points *as equiponderating each other.*"[2]

Thus the head of the French Government at the time of the Convention unites with the statesmen of our own country in attaching value to these claims.

To all this array of argument and authority the Committee see no answer. They follow its teaching, when they adopt the conclusion, in which so many previous committees have already joined, that these individual

[1] Report, February 22, 1830: Senate Documents, 21st Cong. 1st Sess., No. 68, pp. 14, 15.

[2] Gourgaud's Memoirs, Vol. II. p. 129.

claims were originally just, and that the Government of the United States, having appropriated them for a "national" purpose, was substituted for France as debtor.

OBJECTIONS.

ASSUMING the obligation of the United States, the question occurs, What sum should be applied by Congress to its liquidation? But before proceeding to this point, the Committee will glance at what is urged sometimes against this obligation, so far at least as they are aware of opposition.

Objections of a prelim nary character have been already considered; but there are others belonging properly to this stage of the inquiry.

Curiously, the two main objections most often adduced answer each other flatly. It is sometimes insisted that the claims were invalid, by reason of the abnormal relations between France and the United States anterior to the Convention of 1800, pronounced to be a state of war; and then, again, it is sometimes insisted that these claims were provided for in the subsequent Convention of 1803 for the purchase of Louisiana. But, if the claims were really invalid, as has been argued, it is absurd to suppose that France would have provided for them; and if they were really provided for, it is equally absurd to suppose that they were invalid. The two objections might be dismissed as equally unreasonable; but, since they have been made to play a conspicuous part, especially in Presidential vetoes, the Committee will occupy a brief moment in considering them.

Other objections, founded on the later Convention of 1831, on the Act of Congress annulling the French treaties, on the early efforts of the United States to procure satisfaction from France, and on the alleged desperate character of the claims, will be considered in their order.

I.—WAR DID NOT EXIST BETWEEN THE UNITED STATES AND FRANCE.

THE anomalous relations between France and the United States anterior to the Convention of 1800 did not constitute a state of war so as to annul all pending claims. The contrary assertion is inconsistent with (1.) the facts of the case, (2.) the declarations of the two parties, and (3.) the nature of the Convention.

Before considering these several topics, it may be remarked, that, had there been a state of war, it would not follow that all prior rights otherwise valid were annulled, so at least as not to be revived at the close of the war. On one important occasion, the contrary has been held by our Government in its negotiations with Great Britain. The provision relative to the fisheries which appears in the Treaty of 1783 was not noticed in the Treaty of Ghent; and yet the United States did not hesitate to insist afterwards, that, though interrupted by the War of 1812, it remained in full force after the termination of the war. Doubtless, claims bearing the open cause of war, and failing to be recognized in the treaty of peace, are annulled; for the treaty is the settlement of pending controversies between the two powers. But the claims in question were not the open

cause even of the anomalous relations between the United States and France, and they did not fail to have such recognition in the convention terminating those relations as to exclude all idea that they were annulled by war, or any other antecedent facts. It is not necessary to consider the effect of war, for it is easy to establish that war did not exist.

1. The facts of the case are all inconsistent with war. There was no declaration of war on either side; and, still further, throughout the whole duration of the troubles the tribunals of each country were open to citizens of the other, as in times of peace; so that a citizen of the United States was not an "alien enemy" in the courts of France, nor a Frenchman an "alien enemy" in the courts of the United States. This fact, which was presented by Mr. Clayton in his masterly discussion of the question, is most suggestive, if not conclusive.

It is true that diplomatic and commercial intercourse was suspended, that the two powers armed, and that on both sides force was employed. But this painful condition of things, though naturally causing great anxiety, did not constitute war. One power may, in its own discretion, suspend diplomatic and commercial intercourse with another; it may assume all the harness of war, and even use force in retaliation, retortion, or reprisal; but all this falls short of war, *especially when public acts and declarations show that war was not intended.* Such conduct tends to war, and, if continued, naturally ends in war. But it is not of itself that terrible transformation by which one nation, with all its people, is converted into the enemy of another nation, with all its people, so that every citizen of the

one becomes the enemy of every citizen of the other, and all pending rights and contracts between them disappear, at least for a time.

If war be the extinguisher of claims, it is because, in theory, the claimant is supposed to have opportunity for reparation by seizing the property of the enemy, wherever he can find it on the high seas. But no reprisals against France were authorized by the United States; no war on private property was permitted; so that the only principle on which war is the extinguisher of claims fails to apply.

But not even an act of war constitutes war. The two parties determine if war exists. To their public acts and mutual declarations we repair for interpretation of their conduct.

2. On the part of the United States *the declarations are explicit* that war did not exist, although it seemed imminent. Congress was convened in May, 1797, to deliberate on the threatening aspect of affairs, and adopt measures of public defence, which were continued in 1798 and 1799; but in all this series of acts there is constant and sedulous negation of the state of war. The Act of May 28, 1798, after reciting that "armed vessels sailing under authority or pretence of authority from the Republic of France have committed depredations on the commerce of the United States, and have recently captured the vessels and property of citizens thereof on and near the coasts," proceeds to authorize the seizure of any such armed vessel; but nothing is said of war.[1] Another Act, bearing date the same day, authorizes a provisional army, "*in the event of a declaration of war* against the United States, or of

[1] Statutes at Large, Vol. I. p. 561.

actual invasion of their territory by a foreign power, or of imminent danger of such invasion discovered in the opinion of the President to exist, *before the next session of Congress.*"[1] The Act of June 13, 1798, to continue in force only till the end of the next session, and renewed February 9, 1799, for a limited term, suspended commercial relations between the two countries, under penalties of forfeiture;[2] but such acts, however menacing, are absolutely inconsistent with an existing state of war, which of itself, without any additional act, suspends all commercial relations between the belligerent parties. The Act of June 25, 1798, authorizes our merchant vessels to subdue and capture any French armed vessel *from which an assault or other hostility shall be first made.*[3] The Act of July 6, 1798, respecting alien enemies, begins with the words of limitation, "*Whenever there shall be a declared war* between the United States and any foreign nation."[4] The Act of July 7, 1798, declares the treaties no longer "legally obligatory";[5] but if war existed, such an act would have been superfluous. The Act of July 16, 1798, authorizes augmentation of the army "for and during the continuance of *the existing differences* between the United States and the French Republic."[6] The Act of March 2, 1799, also authorizes augmentation of the army, "*in case war shall break out.*"[7] Another Act, passed the next day, provides that certain troops authorized by the Act shall not be raised, "*unless war shall break out* between the United States and some European prince, potentate, or state."[8] And as

[1] Statutes at Large, Vol. I. p. 558.
[2] Ibid., pp. 565, 613.
[3] Ibid., p. 572.
[4] Ibid., p. 577.
[5] Ibid., p. 578.
[6] Ibid., p. 604.
[7] Ibid., p. 725.
[8] Ibid., p. 750.

late as February 20, 1800, while our envoys were on the way to Paris, another Act was passed, providing that further enlistments should be suspended, "*unless*, in the recess of Congress, and during the continuance of *the existing differences* between the United States and the French Republic, *war shall break out* between the United States and the French Republic."[1] All these cumulative measures refer to war, not as actually existing, but only as a future possibility. Meanwhile there were "existing differences" only. Finally, on the 14th of May, 1800, four months before the signature of the Convention, and when the plenipotentiaries on each side were at a dead-lock, another Act was passed, authorizing the abandonment of the military preparations set on foot in contemplation of the contingency of war.[2] Such is a synopsis of testimony from Congressional legislation. And now, when it is considered that Congress alone, under the Constitution, has power to declare war, that it never made any declaration of war against France, and that throughout this whole period of trouble, in its whole series of acts, it expressly negatived the fact of war, is it not impossible to assert, that, according to the understanding of our Government, war actually existed? What Congress did, and what it failed to do, answer in the affirmative.

The declarations of the Executive are as explicit as the declarations of Congress. In the instructions to our plenipotentiaries, under date of October 22, 1799, the Secretary of State, after mentioning the spoliations of France, says: "This conduct of the French Republic would well have justified an immediate declaration of

[1] Statutes at Large, Vol. II. p. 7. [2] Ibid., p. 55.

war on the part of the United States; but, *desirous of maintaining peace,* and still willing to leave open the door of reconciliation with France, *the United States contented themselves with preparations for defence* and measures calculated to protect their commerce."[1] These plenipotentiaries declared to the French, under date of April 11, 1800, that the Acts of Congress, "*far from contemplating a coöperation with the enemies of the Republic,* did not even authorize reprisals upon her merchantmen, but were restricted solely to the giving of safety to their own, till a moment should arrive when their sufferings could be heard and redressed."[2] Again, in a despatch to our minister in England, under date of September 20, 1800, the Secretary of State, who was none other than John Marshall, says: "The aggressions sometimes of one and sometimes of another belligerent power have forced us *to contemplate and to prepare for war as a probable event*":[3] not as an actual event already arrived, but only as a probable event. In the face of such declarations, who can say that war existed?

On the part of France the declarations are equally explicit. It is true, that, on the 12th September, 1800, in conversation, the French plenipotentiaries let drop fitful words, to the effect, that, "if the question could be determined by an indifferent nation, such a tribunal would say that the present state of things was war on the side of America, and that no indemnities could be claimed."[4] But the context shows, that, to avoid the payment of these indemnities, they were driven to every possible subterfuge; and the whole suggestion is

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 561.
[2] Ibid., p. 583. [3] Ibid., p. 452. [4] Ibid., p. 633.

contrary to all the admissions of the French Government, both in the executive and legislative branches. Indeed, these very plenipotentiaries of France, in a formal communication to the American plenipotentiaries, under date of August 11, 1800, declared that "*the state of misunderstanding* which has existed for some time between France and the United States, by the act of some agents rather than by the will of the respective Governments, *has not been a state of war, at least on the side of France.*"[1] We have already seen that it was not on the side of the United States. Then again, under date of December 12, 1801, they contented themselves with characterizing the relations of the two powers at this period as "*almost hostile.*"[2] At an earlier day, Talleyrand, as Minister of Exterior Relations, had written, under date of August 28, 1798: "France has a double motive, as a nation and as a republic, not to expose to any hazard the present existence of the United States. Therefore it never thought of making war against them; . . . . *and every contrary supposition is an insult to common sense.*"[3] When the Convention, in its final form, was laid before the Legislative Assembly, one of the French plenipotentiaries charged with its vindication announced in a speech, November 26, 1801, that "it had terminated *the misunderstanding* between France and America," which, he said, had become such "that it was necessary the reconciliation should be hastened, if it was desired that it *should not become very difficult.*" A report was also made to the Legislative Assembly by M. Adet, formerly French minister to the United

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 616.
[2] Ibid, p. 559.
[3] Ibid., p. 649.

States, in which it is declared: "*There had not been any declaration of war.* Commissions granted by the President to attack the armed vessels of France are not to be regarded as a declaration of war. The will of the President does not suffice to put America in a state of war. In order to this a positive declaration of Congress is requisite. *None has ever existed.*" And these legislative documents, so positive in character, are introduced by the learned editor in words which fitly characterize the international relations to which they refer, when he says that "they will serve to make known the causes which *momentarily disturbed the harmony* of the two states."[1] True enough. Unhappily, the harmony of the two states was disturbed, but war did not exist.

3. The terms of the Convention, and the final conditions of ratification, also, exclude the idea of war. Although beginning with a declaration that "there shall be a firm, inviolable, and universal peace," borrowed, in precise words, from Mr. Jay's treaty with Great Britain, the Convention of 1800 did not purport to be a treaty of peace; nor, indeed, as first executed, did it pretend to settle the questions between the two powers, except by postponing them to "a convenient time." A war annulling claims could not be treated in this way. The American Senate admitted as much, when it limited the duration of the Convention to eight years, which, had war previously existed, would have turned the Convention into a truce. The First Consul confessed the same, when he added his far-reaching proviso, for which, of course, there would have been no occasion, if the claims of American citizens had been

[1] Portiez, Code Diplomatique, Tom. I. pp. 39–57.

annulled by war; and again he testified, in his words at St. Helena, where he speaks of this Convention as having "annulled the *just claims* which America might have made for *injuries done in time of peace.*"

Thus falls the objection, so often urged, founded on the alleged existence of war. Strange, that, while so utterly untenable, it should gain a single supporter! There is one remark which belongs to the close of this topic. Even if France had affirmed that war existed, yet the United States constantly denied it at the time, both by legislative and executive acts; so that our Government is obviously estopped against its recognition, even if it fails to feel the indecency of such an excuse for any further denial of justice.

II.—THESE CLAIMS NOT EMBRACED IN THE LOUISIANA CONVENTION.

THE objection that these claims were provided for in the Convention of 1803, for the purchase of Louisiana, is equally groundless. It is difficult to understand how such a pretext was ever made; but the history of this question shows the strange shifts of opposition, especially when without restraint from knowledge of the subject. The most superficial glance shows that the two Conventions related to two different classes of claims. Those abandoned in 1800 were on account of spoliations, and in the nature of "torts." Those protected in 1803 were "debts." When it is considered how steadfastly the French plenipotentiaries in 1800 opposed the recognition of the claim for "torts," and how the First Consul, by his positive proviso, required their renunciation, it is most unreasonable to assume

that in 1803 they were formally recognized. This assumption becomes still more unreasonable, when it is understood that only at a comparatively recent period was the idea first broached; that it is without support in the documentary history of the Convention, or in any contemporary opinion; that it escaped the attention of the Board of Commissioners appointed under the Convention, as it escaped the attention of successive Secretaries of State, and also of Congressional Committees, reporting on the subject, until thus tardily it was brought forward as a last resort of opposition.

The Convention of 1800, which sacrificed the claim for "torts," kept alive certain pending claims for "debts."

"ART. V. The *debts contracted* by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, *shall be paid*, or the payment may be prosecuted, in the same manner as if there had been no misunderstanding between the two states. *But this clause shall not extend to indemnities claimed on account of captures or confiscation.*"[1]

It will be observed how carefully the claims for spoliation were excluded from the benefit of this provision, which is limited positively to "debts." Though apparently plain, the French Government found difficulties in its execution. Vexatious delays were interposed, and "debts" were treated little better than "claims," so that our minister at Paris, Hon. Robert R. Livingston, was constrained to address the French Government, under date of March 25, 1802: "The fifth article of the treaty says, expressly, they shall be paid;

[1] United States Statutes at Large, Vol. VIII. p. 180.

but justice and good faith say it, independent of the treaty. Yet they remain unsatisfied; nor is the most distant hope as yet afforded them of when or how they will be paid."[1] Such was the spirit of other correspondence. At last, by one and the same transaction, Louisiana was purchased, and these "debts" were provided for. The plenipotentiaries of the United States, Mr. Livingston and Mr. Monroe, — the latter for a second time plenipotentiary, — undertook to pay eighty millions of francs for the purchase, of which sixty millions were for France, and the remaining twenty millions for the payment of "debts" secured by the Convention of 1800; and these terms were embodied in a treaty and two associate conventions of the same date.

The treaty contained the terms of cession. One of the conventions regulated the terms of purchase, and the other provided that "*the debts* due by France to citizens of the United States, *contracted before the 30th September*, 1800, shall be paid" according to certain regulations. It will be observed that these words descriptive of the "debts" are not unlike those employed in the fifth article of the Convention of 30th September, 1800.

The new Convention regulating the payment of "debts" begins with a preamble, setting forth the desire of the President and of the First Consul, "*in compliance with the second and fifth articles* of the Convention of the 30th September, 1800, to secure the payment of the sum due by France to the citizens of the United States." From the association of these two articles some hastily infer a purpose to revive

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 714.

the "claims" abandoned in the famous second article. But such revival, instead of being "in compliance" with that article, or, according to the corresponding French words of the Convention, *en exécution* of that article, would be in direct contradiction of it. The allusion to the second article is obviously to carry into the Louisiana Convention the original exclusion of the spoliation "claims." If any doubt could arise on this allusion, taken by itself, it would disappear, when we consider that the fifth article is both *inclusive* and *exclusive*. It includes "debts contracted," which are to be paid, and it excludes "indemnities claimed on account of captures or confiscations," which are not to be paid. Thus the language of the preamble is justified, and the Convention is *in compliance* with both the second and fifth articles of the original Convention.

If we examine the Louisiana Convention carefully, we find that "debts" alone are provided for. The first article, as we have already seen, declares, "*the debts* due by France to citizens of the United States, contracted before the 30th September, 1800, shall be paid according to the following regulations." The second article describes "*the debts* provided for by the preceding article" as comprised in a conjectural note. The third article declares how "the said debts shall be discharged by the United States." The fourth article more specifically defines *the debts* as follows: "It is expressly agreed that the preceding articles shall comprehend *no debts* but such as are due to citizens of the United States who have been and are yet creditors of France, for *supplies*, for *embargoes*, and *prizes made at sea* in which the appeal has been properly

lodged within the time mentioned in the said Convention, 30th September, 1800." The fifth article explains further the prizes intended in the fourth article, as follows: "The preceding articles shall apply only, 1st, to captures of which the Council of Prizes shall have ordered restitution, it being well understood that the claimant cannot have recourse to the United States otherwise than he might have had to the Government of the French Republic, and only in case of insufficiency of the captors; 2d, *the debts* mentioned in the said fifth article of the Convention of 1800, the payment of which has been heretofore claimed of the actual Government of France, and for which the creditors have a right to the protection of the United States. The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed." Under the first head, the class of captures is here defined. It was those only where the Council of Prizes had ordered restitution, being captures not warranted by the laws of France. Such cases were included among "debts," because the decree of the Council of Prizes ordering restitution instantly created, on the part of the owner, a claim on the captor for the property or its value; and where the captor was "insufficient," the Government assumed the debt. *And this is the only class of captures provided for in the Louisiana Convention.* Under the second head are specified "*the debts* mentioned in the fifth article," with an express declaration that it "does not comprehend prizes whose condemnation has been or shall be confirmed." Thus in every article and at every stage the spoliation claims are excluded from the benefit of the Louisiana Convention.

Such was the contemporary conclusion of our minister at Paris, Mr. Livingston, who, in his letter to the French Government of April 17, 1802, said: "The fifth article expressly stipulates that *all debts* due by either Government to the individuals of the other shall be paid. But as this would also have included *the indemnities for captures and condemnations previously made*, and it was the intention of the contracting parties, by the second article, to *preclude* this payment, as depending on a future negotiation, *it was necessary to except from this promise of payment all that made the subject of the second article*: . . . . as to the payment of indemnities for embargoes in consequence of the cargoes being put in requisition, or with a view to any other political measure which carried with it nothing hostile to the United States, no controversy ever arose between the plenipotentiaries of the two nations." [1]

Surely this objection may be dismissed.

III.—THESE CLAIMS NOT EMBRACED IN THE CONVENTION OF 1831 WITH FRANCE.

ANOTHER objection has been started, kindred to the last, also in kindred ignorance. It is said that these claims were embraced in the later Convention of 1831 with France, under Louis Philippe. No mistake can be greater.

That Convention opens with these words: "The French Government, *in order to liberate itself completely from all the reclamations preferred against it by citizens of the United States* for unlawful seizures, captures, se-

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 717.

questrations, confiscations, or destructions of their vessels, cargoes, or other property, engages to pay a sum of twenty-five millions of francs to the Government of the United States, who shall distribute it *among those entitled*, in the manner and according to the rules which it shall determine."[1]

This provision must be interpreted in the light of preceding treaties, especially of that which had occupied so much attention. They are all *in pari materia*, and therefore, according to a familiar rule of jurisprudence, must be taken together. But the Convention of 1800, by the proviso of the First Consul at its ratification, *liberated France completely* from all liability for the claims now in question, so that they ceased to be valid against her. Therefore these claimants could not be "among those *entitled*" under the later Convention. This interpretation is confirmed by the judgment of the French Government, and also by the judgment of our own Commissioners under the Convention. Mr. Rives, our minister at Paris, writing to Mr. Van Buren, the Secretary of State at the time, under date of February 18, 1831, says: "From what I have been able to learn of ———'s report, it is favorable throughout to the principle of our claims. It excludes, however, the claims of American citizens in the nature of debt or of supplies, as being alien to the general scope of the controversy between the two Governments, — and also American claims of every description originating previous to the date of the Louisiana arrangement, in 1803, which has been invariably alleged by this Government to be in full satisfaction of all claims then existing."[2]

[1] United States Statutes at Large, Vol. VIII p. 430.

[2] Executive Documents, 22d Cong. 2d Sess., H. of R., No. 147, p. 165.

Our own Commissioners, sitting at Washington, reported to the Secretary of State, under date of December 30, 1835, that they had required every person seeking *to entitle* himself under the Convention to show that his "claim remained unimpaired and in full force against France at the date of the Convention of 1831."[1] But the claims in question did not come within this category. Clearly, they were not "unimpaired and in full force against France."

All this is apparent on the face; but it was demonstrated by the action of the Commissioners. The experiment was made with regard to captures prior to the ratification of the Convention of 1800, and no less than one hundred and four cases were submitted to the board. All but four were rejected. The first rejections, in point of time, were January 11, 1833, in two different cases, when we have the following entries: "Caroline, captured February 10, 1798, — rejected, — *the vessel having been captured before the 30th September*, 1800"; "Brig Orlando, captured March 1, 1800, — rejected, — *the capture having been made anterior to the 30th September*, 1800."[2] The indemnities allowed by the Commissioners were mainly for captures under the decrees of Berlin, Milan, Rambouillet, and Trianon, — that succession of sweeping edicts by which Napoleon at the height of power enforced his Continental system. There were four awards for captures after the signature of the Convention of 1800, and before its ratification. As such cases, occurring during this intermediate period, were plainly saved from the renun-

[1] Executive Documents, 24th Cong. 1st Sess., H. of R, No. 117, p. 4.

[2] Report of Secretary of State, April 25, 1846: Senate Documents, 29th Cong. 1st Sess., No. 313.

ciation of the Convention of 1800,[1] and yet were not included in the Convention of 1803, they came naturally within the scope of the Convention of 1831. The claims in question had no such advantage. Renounced in 1800, they were not adopted in 1831. But, ceasing to be claims upon France, they have become claims upon the United States.

IV. — THESE CLAIMS NOT AFFECTED BY THE ACT OF CONGRESS ANNULLING THE FRENCH TREATIES.

THEN it is said that the French treaties were annulled by Act of Congress, so as to render the set-off and mutual release a mere form, and nothing else. This objection, also, proceeds in ignorance of the question.

It is true, the United States, by Act of Congress, July 7, 1798, declared the treaties heretofore concluded with France *no longer obligatory*.[2] But the question still remained as to the effect of this Act. Not purporting to be retrospective, all obligations under the treaties at that date were fixed, whether on the part of the United States or on the part of France. Therefore France, besides constant liability under the Law of Nations, was liable also under the treaties for all depredations anterior to this date, and the United States were liable for all non-performance of obligations anterior to this date. Assuming that the treaties were annulled, it is evident that the anterior claims of each were not in any way affected; so that there was still, even under the treaties, occasion for set-off and mutual release.

[1] Art. IV.

[2] Statutes at Large, Vol. I. p. 578.

The depredations upon our commerce were not merely in violation of ancient treaties, but also of the Law of Nations; so that, even if the treaties were annulled, yet the Law of Nations remained with its obligations and remedies. Our plenipotentiaries were instructed to obtain compensation for captures and condemnations contrary to the Law of Nations generally received in Europe, or to stipulations of treaty, so long as the latter "remained in force." As the treaties "remained in force" until July 7, 1798, we were unquestionably liable to France for indemnities to that day. Before that day the West India islands were lost. Before that day we excluded French privateers and their prizes from our ports. All proper damages for these things must have entered into the French account against us. Therefore the annulling Act of Congress could affect only the *quantum* of consideration on both sides at the set-off and mutual release, and not the fact of consideration.

But it is more than doubtful if the annulling Act could have the effect attributed to it. Can one of two parties render a contract void by mere declaration to that effect? Between two individuals this cannot be done. Could it be done between two nations? Mr. Jefferson thought not. At least, there is a report from him on another occasion completely covering this case. These are his words: "It is desirable in many instances to exchange mutual advantages by legislative acts rather than by treaty; because the former, though understood to be in consideration of each other, and therefore greatly respected, yet, when they become too inconvenient, can be dropped at the will of either party; *whereas stipulations by treaty are forever irrevo-*

cable but by joint consent, let a change of circumstances render them ever so burdensome."[1] Chief Justice Marshall quotes another opinion, where a treaty was declared to be not only the law of the land, but a law of a superior order, "because it not only repeals past laws, *but cannot itself be repealed by future ones.*"[2] Such authority would seem to settle this question, especially reinforced as it is by the Law of Nations; for it must not be forgotten that the obligation of treaties is determined by International Law rather than by Municipal Law.

Even supposing the Act of Congress had succeeded in annulling the treaties, its effect, as regards France, was not so much to discharge her claims as to make them perfect. In plain terms, it was a final determination on our part not to fulfil the treaties. The circumstances of the time, perhaps, rendered it necessary; but your Committee cannot fail to observe, that, according to all principles of justice and the established usage of nations, this very determination consummated the right of France to indemnities for non-observance of the treaties. On our part there was no longer any pretence to fulfil the treaties; so that this very Act of Congress, which is cited to excuse us, may be cited to condemn us.

Whatever the law of this case, even assuming, that, according to good opinions, the treaties were annulled on the 7th July, 1798, it is perfectly clear that at the negotiation of 1800 they were treated by France as obligatory. On these she founded her counter-claims.

[1] Report on the Tonnage Duty, January 18, 1791: Wait's State Papers, Vol. X. p. 73.

[2] Life of Washington, Vol. V., Appendix, Note II.

The present narrative shows her persistency. As often as our claims were urged, her counter-claims were pressed in reply. And why ask the renunciation of the treaties, if the Act of Congress had already annulled them? Why, further, offer a large sum of money for release from their obligations? Whatever the effect of the annulling Act in the judgment of the American plenipotentiaries, it is clear that they regarded the treaties as a cloud to be removed. And it is equally clear that the French plenipotentiaries to the last maintained the obligations of the treaties. The instructions of the First Consul, before entering upon his Italian campaign, were to make "the acknowledgment of former treaties the basis of negotiation and the condition of compensation."[1] It was the finality of these instructions which at the time caused the dead-lock already described. Thus, on the part of the United States, the obligation of the treaties was denied subsequently to July 7, 1798, while on the part of France it was affirmed as an indispensable condition down to the negotiation.

Therefore, on the part of the United States, there were claims under the treaties anterior to July 7, 1798, and also under the Law of Nations generally. On the part of France there were counter-claims under the treaties down to the negotiation. Each side was tenacious. Neither would yield. The time for compromise arrived. Then came the set-off and mutual release. The transaction was between two nations, but it was identical in character with transactions often occurring between two individuals.

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 609.

V. — EARLY PERSISTENCY TO SECURE INDEMNITIES FROM FRANCE NO GROUND OF EXEMPTION FROM PRESENT LIABILITY.

THE persistent efforts of our Government, anterior to the Convention of 1800, are sometimes brought forward as sufficient reason for present indifference. This also is a mistake.

It is true that our Government exerted itself much. Considering its comparative immaturity, it deserves credit for the courage and determination with which it labored. But it must not be forgotten that in all it did, even for the recovery of indemnities, it acted under the duties and instincts of national defence. Our commerce was despoiled, to the detriment of American citizens. But this grievance, which went on assuming larger proportions, proceeded directly from the *hostile spirit* of France, aroused by alleged infraction of national obligations on our part; so that behind the question of indemnities rose always the question of self-defence. France made reprisals because the United States refused compliance with solemn treaties, and, as is usual in such cases, individual citizens were the sufferers. Defending the interests of its citizens, the country itself was defended. To abandon these interests, especially without securing an abandonment of French pretensions, would have been an abandonment of the country, leaving it the dishonored victim of untold exactions without end. If this be correct, — and your Committee do not see how it can be controverted, — there can be no boast of extraordinary efforts, all of which, whatever form they assumed, were in the performance of a patriotic duty, simple as the

filial devotion of Cordelia, "according to her bond, nor more nor less."

And now the fidelity of that early day, when duty was done, is the apology for infidelity to-day, when duty is left undone; and those patriotic efforts are vouched as a title to present exemption. Because the Government was zealous for indemnities when France was responsible, *argal* it may be indifferent now, when the United States are substituted for France. Or has it come to this, — that it is right to be zealous in pressing a foreign Government, but not right to be zealous against ourselves, *when substituted for that foreign Government*, as in the present case? Beyond the misconception of public duty apparent in this pretence, it forgets the true state of the question. Here, again, we are brought to the Convention of 1800, when both claims and counter-claims were adjusted. If the claims on our side had been deliberately rejected, or if our Government had been compelled to withdraw, as in a case of nonsuit, the case might have been otherwise. There was no rejection, and no nonsuit, but, as has been so fully shown, a set-off and mutual release, by which each party accorded to its adversary just as much as it claimed for itself. So far as the two Governments were concerned, claims and counter-claims were extinguished, and neither could look to the other; but it did not follow that American citizens, whose "individual" claims had been appropriated to extinguish "national" obligations, were cut off from appeal to their own Government. On the contrary, the very zeal for these claimants, while they looked to France, is still due in their behalf, now that, by the action of their own Government, they must look to their country.

It is sometimes said in sarcasm that it is easy to be generous at the expense of another; but in this case, now that the responsibility has been transferred to our own country, it is not a question of generosity, but of debt. The property of these claimants is actually in the hands of our Government, like assets paid over and deposited "for whomsoever it may concern," — or, to use a more pungent illustration, like certain property to which there can be no valid title against the original owner. Stolen goods may be followed wherever found. But the vessels of these claimants were stolen by France, and at last are found in the hands of our own Government. Will the Government hold them against the real owners? For nearly ten years it denounced the conduct of France. How, then, can it profit by this conduct at the expense of its own citizens? If the receiver is as bad as the original offender, how can the Government expect to escape the indignant condemnation it fastened upon France? Least of all, how can any early persistency to recover this property excuse its detention now?

VI. — THESE CLAIMS NEVER DESPERATE, SO AS TO BE OF NO VALUE.

KINDRED to the last objection is the assertion that the claims were intrinsically desperate, so as to be of no value, — an objection as humiliating as false.

It is humiliating, because it assumes that claims solemnly declared just, both by the executive and legislative branches, — the former by successive acts of diplomacy, and the latter by successive Acts of Congress, — were of "no value." If this were true,

then was our Government, when it sued these claims, guilty of national *barratry*, for which it would deserve to be thrown over the bar of nations. It was a stirrer of false suits. Such an imputation is an impeachment of the national character.

But it is false. The claims were never "desperate," except so far as they were doomed to meet the counter-claims of France. On the contrary, they were intrinsically just, and their justice was often admitted even by France, who advanced against them her own pretensions under the treaties. And when the set-off and mutual release occurred, their validity was solemnly recognized; nay, more, they were paid to the United States. Such is the inconsistency of objectors, insisting that claims thus recognized and paid were so far "desperate" as to be of "no value," when they were of sufficient value to form the sole consideration of release from immeasurable national obligations. If you would find a measure of value for the American claims, you must look to the counter-claims of France, not forgetting that all the vehemence with which these were sustained testifies unmistakably to our claims.

If we may judge from our national history, there is no reason to doubt that these claims, if not released by our Government, would have been fully satisfied by France afterwards. It is in the nature of claims on foreign powers to seem desperate. Such was the case, as is well remembered, with the claims on Denmark, on Spain, and on Naples; but all these have been paid. *No just claim by the American Government can be desperate.* What claims could seem more desperate than those under the arbitrary, wide-spreading edicts of Napoleon Bonaparte in his pride of place? But Presi-

dent Jackson, when Louis Philippe had become King, made an appeal, as he expressed it, "to the justice and magnanimity of regenerated France," [1] and even these claims, accruing under a Government which had ceased to exist, were satisfied. The claims in question had as much intrinsic equity, and were more intimately associated with the national sentiments. Asserting that they would have been paid, the Committee are sustained not only by the reason of the case, but by the judgment of the disinterested historian of our country, who thus concludes his account of the Convention of 1800, and its final ratification with the proviso of the First Consul: —

"Had the treaty been ratified in its original shape, the sufferers by the spoliations of the French might, perhaps, before now, have obtained that indemnity from the French Government which they have ever since been asking of their own, but which has hitherto been unjustly withheld." [2]

There is no statute of limitations between nations; so that these claims would have been as valid against France in 1831 as they unquestionably were in 1800. A nation like the United States has only "to bide its time," and the day of justice will come. Indeed, President Jackson, when dwelling on the negotiations with France in 1831, bore testimony to the vitality of American claims on foreign powers, when he said that the new Convention would be "an encouragement for perseverance in the demands of justice, by this new proof, that, if steadily pursued, they will be listened to, and admonition will be offered to those powers, if any, which

[1] Message, December 7, 1830.
[2] Hildreth, History of the United States, Vol. V. p. 400.

may be inclined to evade them, *that they will never be abandoned.*"[1] These words of Andrew Jackson are a sufficient answer to the present objection.

ALL OBJECTIONS ANSWERED.

SUCH are the objections to the responsibility of the United States. The Committee believe that they have all been answered, so that the claims stand above impeachment or question, as a debt to be liquidated and paid. It only remains to consider what sum should be appropriated for this purpose.

JUST COMPENSATION.

THE "just compensation" to be paid by the United States may be regarded, according to the classical report of Mr. Livingston, in two lights: *first*, the value of the advantages to the United States at the expense of these claimants; and, *secondly*, the actual losses sustained by these claimants. Neither is proposed as an absolute measure. A glance at each will enable us to arrive, by approximation, at a proper result.

VALUE OF ADVANTAGES TO THE UNITED STATES.

IT is impossible to estimate in money the advantages to the United States. Beyond the great boon of assured peace, under which our commerce, no longer exposed to spoliation, put forth at once more than its original life, two specific objects were gained: *first*, exemption from all outstanding engagements and liabilities of every nature under the early treaties with

[1] Message, December 6, 1881.

France; and, *secondly*, the establishment of a new Convention, which, while rejecting much-debated claims and counter-claims, provided positive advantages to the United States, among which was that payment of "debts" subsequently assured by the Louisiana Convention.

If the United States could be held responsible to France for the treasure lavished on national independence, in pursuance of these original treaties, there would be an item of fourteen hundred and forty millions of francs, or about two hundred and eighty millions of dollars.[1] The brave lives sacrificed for us cannot be estimated in any account; but France did not forget them. Even amidst the congratulations at Morfontaine in honor of the Convention, the First Consul reminded the joyous company of the sacrifice. Beyond the toast he proposed in honor of those who fell in battle for the independence of the New World, there is no record of what was said by the successful general of France; but old Homer, in one of his most touching passages, had already spoken for him:—

> "Life is not to be bought with heaps of gold;
> Not all Apollo's Pythian treasures hold,
> Or Troy once held in peace and pride of sway,
> Can bribe the poor possession of a day.
> Lost herds and treasures we by arms regain,
> And steeds unrivalled on the dusty plain;
> But from our lips the vital spirit fled
> Returns no more to wake the silent dead."[2]

[1] Calonne, as cited by Mr. Clayton, Speech in the Senate on French Spoliations, April 23, 1846: Congressional Globe, 29th Cong. 1st Sess., Appendix, p. 856. A recent authority puts this item at 1,500,000,000 francs, or $300,000,000. — *Les Finances Françaises sous l'ancienne Monarchie, la République, le Consulat et l'Empire*, par M. le Baron de Nervo, Receveur-Général, (Paris, 1863,) Tom. II. p. 176.

[2] Iliad, tr. Pope, Book IX. 524–531.

Under the sod of America, and under the waves of the Atlantic, Frenchmen were sleeping whose lives had been given to the support of our cause. If France did not forget them, let it be spoken in her honor; but we cannot forget them, as we try to state the great account between our two countries. Their swords, if flung into the scales, whatever "heaps of gold" we might bring, would forever turn the balance against us.

But how estimate the value of release from the "guaranty" retrospectively and prospectively, as well for past failures as future liabilities? It was often urged that the guaranty bound the United States to the support of France only in the event of a defensive war, and that the war in which she had been engaged was not of this character. But it is more than doubtful if either proposition can be maintained. The guaranty on its face has no limitation. And even if it had such limitation, who will venture to say that the war in which France drove back her multitudinous assailants, reinforced by the navies of England, was not defensive? If France did not at once require the execution of the guaranty, it was none the less a vital obligation.

That our Government appreciated the embarrassments, if not the obligations, which the guaranty entailed, has already been shown by the Committee. But there are certain words that may be fitly quoted again. In the instructions of our Secretary of State to the first triumvirate of plenipotentiaries at Paris, under date of July 15, 1797, it is admitted that "our guaranty of the possessions of France in America will perpetually expose us to the risk and expense of war, or to disputes and questions concerning our national

faith." On this account the plenipotentiaries were instructed to obtain its release, and "on the part of the United States, instead of troops or ships of war, to stipulate for a moderate sum of money or quantity of provisions, at the option of France, ... not to exceed two hundred thousand dollars a year."[1] This was moderate; but it was a recognition of the guaranty, and of its practical value. The next triumvirate, at the negotiation of 1800, offered more. They proposed to buy out the guaranty by a payment of five millions of francs, or one million of dollars.[2] It is needless to say that both these offers were rejected.

It would be as difficult to measure in money the value of that guaranty, retrospectively and prospectively, as to measure in money our obligations to France in the assurance of national independence. The liabilities for failure prior to 1800, if pressed, would not have been inconsiderable. But had the guaranty continued so as to constrain the United States throughout the long war that followed, ending at Waterloo, what arithmetic can calculate the damage? Nay, more,— if, at the present moment, any such guaranty bound us to France, who would not feel that it was an obligation from which we must be released at any price?

Besides the obligations of "guaranty," were other engagements with regard to French armed ships in our ports which had proved most onerous. Here, also, was alleged failure on our part; and there was the prospect of infinite embarrassment, if not of open war, unless these obligations were cancelled. To keep them would cause collision with England; not to keep them

[1] Senate Documents, 19th Cong. 1st Sess., No. 102, pp. 457, 458.
[2] Note to the French Plenipotentiaries, August 20, 1800: Ibid., p. 625.

would cause collision with France. Our plenipotentiaries offered, in the negotiation of 1800, three millions of francs for release from these obligations.[1] This moderate offer was rejected also.

France continued stubborn, insisting upon the ancient treaties, with all consequent indemnities. At last, by the propositions of the 4th of September, 1800, already exhibited by your Committee, a measure of value was affixed to our engagements and liabilities. France undertook to release us from all these on condition that we would pay the indemnities due to our citizens, thus treating claims and counter-claims as equivalent in value. It was required positively that "the indemnities which shall be due by France to the citizens of the United States *shall be paid for by the United States.*"[2] In consideration of release from the treaties, the United States were to assume the obligations of France to American claimants. How this proposition, rejected at first, eventually prevailed in the Convention and its successive amendments has been already explained. It is mentioned now only to show the value of these engagements and liabilities.

ACTUAL LOSSES TO CLAIMANTS.

THE practical question remains, as to the actual losses of the claimants. Here the evidence is precise and full.

Our own Government, when pressing these claims upon France, gave an official estimate of their value.

[1] Note to the French Plenipotentiaries, August 20, 1800: Senate Documents, 19th Cong. 1st Sess., No. 102, p. 625.

[2] Note from the French Plenipotentiaries: Ibid., p. 630.

On one occasion it put them above fifteen million dollars.[1] Afterward it put them at twenty million dollars. The latter estimate is found in a report from the Secretary of State to Congress, under date of January 18, 1799, where it speaks of "unjust and cruel depredations on American commerce, which have brought distress on multitudes and ruin on many of our citizens, and occasioned *a total loss of property to the United States of probably more than twenty millions of dollars.*"[2] Inquiry into the losses confirms this statement. From evidence presented to committees in former years, and now belonging to history, it has been estimated that there were *eight hundred and ninety-eight vessels* included in the claims released to France.[3]

The American vessels despoiled by France between 1792, the outbreak of the European war, and July 31, 1801, when the Convention of 1800, with its proviso, was ratified by Napoleon Bonaparte, have been reckoned at two thousand two hundred and ninety, embracing as follows: first, vessels captured by the French; secondly, vessels captured by the French and Spaniards conjointly; thirdly, vessels detained by embargo at Bordeaux. The following list shows how the account stands.

[1] Conference of American Plenipotentiaries with M. X., October 29, 1797: American State Papers, Foreign Relations, Vol. II. p. 163.

[2] Senate Documents, 19th Cong. 1st Sess., No. 102, p. 430.

[3] Mr. Webster, in his careful speech of 12th January, 1835, says: "So far as can be learned from official reports, there are something more than six hundred vessels with their cargoes which are supposed to form claims under this bill." — *Works*, Vol. IV. p. 177.

List of Vessels in different Classes despoiled by France.[1]

Whole number		2,290
From which deduct as follows: —		
1. Vessels paid for by special decrees of France	14	
2. Vessels paid for under the Convention of 1803, viz.: —		
For embargoes	103	
For contracts	270	
For prize causes under order of restitution	6	
	379	
3. Vessels rejected under Convention of 1803, viz.: —		
For contracts or supplies	102	
For prize causes	26	
	128	
4. Vessels paid for by Spain under the Florida treaty of 1819	173	
5. Vessels rejected under Florida treaty	191	
6. Vessels paid for under Convention with France of July 4, 1831, being for captures between the signing and ratification of the Convention of 1800	4	
7. Vessels rejected for want of merit, neglect of claimants, loss of proof, and other contingencies, reckoned at	503	
		1,392
		898

Thus we are brought to the number of *eight hundred and ninety-eight vessels* bartered to France.

To arrive at the value of these vessels, the Committee have been led to look at the estimate of vessels under conventions with other powers for the payment of similar claims. Here is a list allowed by different powers, with the average of each vessel: —

[1] From a Review of the Veto Message of President Pierce, by James H. Causten, pp. 21, 22.

	Vessels.	Averages.
Great Britain	217	$ 47,672.81
Spain	40	8,136.49
France	357	10,504.20
Spain	320	15,625.00
Denmark	112	5,987.17
France	361	12,984.71
Naples	51	37,745.00
Spain	20	30,000.00
Mexico	64	31,658.43
Colombia	5	21,474.53
	1,547	$ 221,788.34

From this list it appears that Mexico has paid as high an average as $ 31,000 for each vessel; Naples, $ 37,000; and Great Britain, $ 47,000. The general average of the whole list is $ 19,000.

If the vessels despoiled by France were estimated according to the highest average, namely, that of vessels despoiled by Great Britain, the sum-total would swell to no less than $ 42,206,000; estimated according to the general average, the amount is $ 17,062,000.

But the valuation which has been deemed most satisfactory is that presented in the indemnity paid by Spain for the French spoliations on our commerce in her ports during this period, amounting, for 173 vessels, to $ 2,845,619, being an average of $ 16,500 for each vessel. Adopting this average, we have as the aggregate value of the 898 vessels yielded to France under the Convention of 1800, and lost to our merchants, the sum of $ 14,817,000, — nearly *fifteen million dollars.*

This estimate, tested by the official statements, fixing the spoliations in October, 1797, at fifteen millions, and in January, 1799, at twenty millions, will appear at least not excessive, — adding for the continued spolia-

tions during the succeeding two years and a half to July, 1801, only the very moderate allowance of two and one half millions, (being in the ratio of but one fourth the increase for the fifteen months between the two former dates,) and deducting payments. Here are the figures: —

Official estimate of January, 1799 .	$ 20,000,000	
Additional to July, 1801, say . .	2,500,000	
		$ 22,500,000
Deduct therefrom —		
1. Vessels paid for by France, fifty-two cases, at the average $ 16,500 . . .	$ 858,000	
2. Debts paid under Convention of 1803	3,750,000	
3. French spoliations, paid for under treaty with Spain of 1819	2,845,619	
		7,453,619
Sum-total, after deductions		$ 15,046,381

If to this estimate interest be added, even at the smallest rate, the losses of these sufferers will assume vastly larger proportions. More than sixty years have run their course since the United States, by a public act and for a valuable consideration, became their debtor. From the beginning the country has enjoyed without price all the "national" benefits originally secured at their expense, as part of the national capital with its bountiful income, while these claimants have been shut out from their property, and all its just profits. If interest be due on any national debt, it is difficult to see why it is not due here.

Never was a case stronger. Nor is there any doubt with regard to the rule. According to the best authorities, whether publicists or courts, interest is justly due.

Though swelling the national liability, it is none the less an item in the case.

It will be borne in mind that these claims are under the Law of Nations. As such, the rule of damages is under that law, and not Municipal Law. Therefore the Committee resort to the Law of Nations. Among all the authorities, none has spoken more fully and clearly than Rutherforth; nor is there any one whose words on this point are oftener cited. Here is the rule: —

"In estimating the damages which any one has sustained, where such things as he has a perfect right to are unjustly taken from him, or withholden, or intercepted, we are to consider not only the value of the thing itself, but the value likewise of the fruits or profits that might have arisen from it. He who is the owner of the thing is likewise the owner of such fruits or profits. So that it is as properly a damage to be deprived of them as it is to be deprived of the thing itself." [1]

Grotius says substantially the same.[2] So does Vattel, who declares that claimants may obtain "what is due, *together with interest and damages.*" [3] And Wheaton copies Vattel.[4] The Supreme Court of the United States gives the same rule with nearly equal simplicity: —

"The prime cost, or value of the property lost at the time of the loss, and, in case of injury, the diminution in value by reason of the injury, *with interest upon such valuation*, affords the true measure for assessing damages." [5]

Such is the law of interest, and the Committee refer to it as illustrating the accumulated losses which await satisfaction at the hands of Congress.

[1] Institutes of Natural Law, Book I. ch. 17, § 5.
[2] De Jure Belli ac Pacis, Lib. II. cap. 17, § 4.
[3] Le Droit des Gens, Liv. II. ch. 18, § 342.
[4] Elements of International Law (ed. Lawrence), Part IV. ch. 1, § 3.
[5] The Amiable Nancy, 3 Wheaton, R., 560.

RECOMMENDATIONS OF THE COMMITTEE.

THE Committee, impressed by the original justice of these claims and the present obligation of the United States, do not hesitate to recommend their liquidation and payment at an early day, as they would recommend the discharge of a national debt. While setting forth the unanswerable evidence of their value, they content themselves with the recommendation made many years ago, and repeated by successive committees of both Houses of Congress, limiting the appropriation to a sum not exceeding five million dollars, without interest, to be distributed by a board of commissioners *pro rata* among the claimants, according to the provisions of the bill reported herewith. The limitation is a departure from strict justice, but it is part of the additional sacrifice which seems to be expected by Congress from these long-suffering claimants.

In deference to the Secretary of the Treasury,[1] who, when consulted thereupon, objected to the creation of a stock for this special purpose, as provided in former bills, it is proposed that the money be paid whenever Congress shall make an appropriation therefor.

By positive description the bill is made to cover claims for illegal captures and condemnations prior to July 31, 1801, the date of the final ratification of the Convention. But, by positive words of exclusion, it is provided that the bill shall not cover claims originally embraced in the Louisiana Convention of 1803, in the treaty with Spain of 22d February, 1819, or in the Convention with France of July 4, 1831; so that, in point

[1] Hon. S. P. Chase.

of fact, the bill is carefully limited to those original claims which, after postponement by the second article of the Convention of 1800, were, at its final ratification, definitely renounced by the United States, in consideration of equivalent renunciations from France.

CONCLUSION.

THE Committee have now finished the review which, in the discharge of public service, they were called to make. Approaching a much vexed question without prejudice, they have striven to consider it with candor, in the hope of ascertaining and exhibiting the requirements of duty. The conclusion they have adopted, in harmony with so many previous committees of both houses, and also with Congress itself, which has twice enacted a law for the satisfaction of these claims, is now submitted to the judgment of the Senate.

How the Committee have reached this conclusion is seen by a final glance at the field that has been traversed. Putting aside the three preliminary objections to these claims, — (1.) that they are ancient and stale, (2.) that they have passed into the hands of speculators, and (3.) that they should be postponed on account of the present condition of public affairs, — the Committee have considered in order four principal topics: *First*, the claims of American citizens on France, as they appear in the history of the times; *secondly*, the counter-claims of France, as they, too, appear in the history of the times; *thirdly*, how the "individual" claims of American citizens were sacrificed to procure release of the "national" claims of France by a proceeding in the nature of set-off and mutual release;

and, *fourthly*, how the United States, for a valuable consideration, assumed the obligations of France, so as to become completely responsible therefor. Not content with showing affirmatively the merits of the claimants, the Committee next examined all known objections to the asserted responsibility of the United States, establishing negatively: (1.) that the relations between France and the United States were at no time such as to constitute a state of war, invalidating the claims; (2.) that they were not embraced in the Convention for the purchase of Louisiana; (3.) that they were not embraced in the later Convention of 1831; (4.) that the alleged annulling of the French treaties by Act of Congress did not affect them; (5.) that the early efforts of our Government with France, for their satisfaction, furnish no ground of exemption from present liability; and (6.) that the claims, at the time of their abandonment, were not desperate, so as to be without value.

With the removal of all known objections, the way was open to consider the extent of "just compensation" under three different heads: (1.) the advantages secured to the United States by the sacrifice of these claimants; (2.) the actual losses of these claimants; and (3.) the final recommendations of the Committee.

Such is the whole case in its divisions and subdivisions. There is one reflection which belongs naturally to the close. These claims have survived several generations, entwining themselves each year with the national history. Meanwhile the Republic, for whose advantage they were sacrificed, has outgrown the puny condition of that early day, when its commerce was the prey of France, and even the sacred debt for independence was left unpaid. These claimants have been

called to remark the glorious transformation by which the weak has become strong and the poor has become rich; with glistening eye they have followed the flag of the country, as it was carried successfully in every sea; with sympathetic heart they have heard the name of the country sounded with honor in every land; and now they joyfully witness the unexampled resources with which it upholds the national cause against an unexampled rebellion; — but these claimants have been called to observe, especially, how, for many years, unchecked by hindrances, the National Government labored successfully with foreign powers to secure justice for despoiled citizens, until all nations — Great Britain, Spain, Denmark, Naples, Holland, Mexico, Colombia, Peru, and Chile — have yielded to persistent negotiation, and even France has paid indemnities to our citizens for spoliations subsequent to these very claims. All this history these claimants have observed with pride; but how can they forbear to exclaim at the sacrifice required of them, — that they alone, the pioneers of our commercial flag, are compelled "in suing long to bide," while part of the debt for national independence is cast upon their shoulders, and the whole country enjoys priceless benefits at their expense? Well may these disappointed suitors, hurt by unfeeling indifference to their extensive losses, and worn with endless delay, cry out in bitterness of heart, "Give us back our ships!" But this cannot be done. It only remains that Congress should pay for them.

APPENDIX.

LIST OF REPORTS OF COMMITTEES.

Number.	Where reported.	By whom reported.	Committee.	Date.	Bills and reports.	Detailed reports.
1	House	Mr. Giles [1]	Select	April 22, 1802	. . . . .	R.
2	House	Mr. Marion	Select	Feb. 18, 1807	Favorable	R.
3	Senate	Mr. Roberts	Claims	Mar. 3, 1818	Adverse	R. 124
4	House	Mr. Russell	Foreign Affairs	Jan. 31, 1822	Adverse	R. 3.
5	House	Mr. Forsyth	Foreign Affairs	Mar. 25, 1824	Adverse	R. 94
6	Senate	Mr. Holmes	Select	Feb. 8, 1827	Favorable	R. 48
7	House	Mr. E. Everett	Foreign Affairs	May 21, 1828	Favorable	R. 264
8	Senate	Mr. Chambers	Select	May 24, 1828	Favorable	R. 296
9	Senate	Mr. Chambers	Select	Feb. 11, 1829	Favorable, bill	R. 76
10	House	Mr. E. Everett	Foreign Affairs	Feb. 16, 1829	Favorable	R. 82
11	Senate	Mr. E. Livingston	Select	Feb. 22, 1830	Favorable, bill	R. 68
12	Senate	Mr. E. Livingston	Select	Dec. 21, 1830	Favorable, bill	R. 32
13	Senate	Mr. Wilkins	Select	Jan. 26, 1832	Favorable, bill	
14	Senate	Mr. Chambers	Select	Dec. 20, 1832	Favorable, bill	
15	Senate	Mr. Webster [2]	Select	Dec. 10, 1834	Favorable, bill	
16	House	Mr. E. Everett / Mr. Cambreleng	Foreign Affairs	Feb. 21, 1835	Favorable / Adverse	R. 121
17	House	Mr. Howard	Foreign Affairs	Jan. 20, 1838	Favorable, bill	R. 445
18	House	Mr. Cushing	Individual	Mar. 31, 1838	Favorable	
19	House	Mr. Cushing / Mr. Pickens	Foreign Affairs	April 4, 1840	Favorable, bill / Minority Adv's	R. 343
20	House	Mr. Cushing	Foreign Affairs	Dec. 29, 1841	Favorable, bill	R. 16
21	Senate	Mr. Choate	Foreign Relat's	Jan. 28, 1842	Favorable, bill	
22	Senate	Mr. Archer	Foreign Relat's	Jan. 5, 1843	Favorable, bill	
23	House	Mr. C. J. Ingersoll	Foreign Affairs	April 17, 1844	Favorable, bill	
24	Senate	Mr. Choate	Foreign Relat's	May 29, 1844	Favorable, bill	
25	Senate	Mr. Choate	Foreign Relat's	Dec. 23, 1844	Favorable, bill	
26	Senate	Mr. J.M. Clayton [3]	Select	Feb. 2, 1846	Favorable, bill	
27	House	Mr. Tru. Smith [4]	Foreign Affairs	July 13, 1846	Favorable, bill	
28	Senate	Mr. Morehead	Select	Feb. 10, 1847	Favorable, bill	R. 144
29	House	Mr. Tru. Smith	Foreign Affairs	Jan. 4, 1848	Favorable, bill	
30	Senate	Mr. Tru. Smith [5] / Mr. Hunter	Select	Feb. 5, 1850	Favorable, bill / Minority Adv's	R. 44
31	House	Mr. Buel	Foreign Affairs	June 14, 1850	Favorable, bill	R. 355
32	Senate	Mr. Bradbury / Mr. Felch	Select	Jan. 14, 1852	Favorable, bill / Minority Adv's	R. 26
33	Senate	Mr. Hamlin [6]	Select	Jan. 17, 1854	Favorable, bill	
34	House	Mr. Bayly [7]	Foreign Affairs	Jan. 4, 1854	Favorable, bill	
35	House	Mr. Pennington	Foreign Affairs	Mar. 3, 1857	Favorable, bill	
36	Senate	Mr. Crittenden [8]	Select	Feb. 4, 1858	Favorable, bill	R. 53
37	House	Mr. Clingman	Foreign Affairs	May 5, 1858	Favorable, bill	
38	House	Mr. Royce	Foreign Affairs	Mar. 29, 1860	Favorable, bill	R. 259
39	Senate	Mr. Crittenden	Select	June 11, 1860	Favorable, bill	
40	Senate	Mr. Sumner	Foreign Relat's	Jan. 13, 1862	Favorable, bill	
41	Senate	Mr. Sumner	Foreign Relat's	Jan. 20, 1863	Favorable, bill	

1 Favorable statement of facts, without coming to any conclusion.
2 This bill was voted by the Senate, February 3, 1835, yeas 25, nays 20.
3 This bill was voted by the Senate June 8, 1846, yeas 27, nays 23.
4 This bill (being Mr. Clayton's bill as voted by the Senate) was voted by the House, August 4, 1846, yeas 94, nays 87. It thus passed both houses, but was vetoed by President Polk as a Senate bill; and on the veto the Senate voted yeas 27, nays 15,—not two thirds.
5 This bill was voted by the Senate, January 24, 1851, without a division.
6 This bill was voted by the Senate, Feb. 15, 1854, yeas 27, nays 15.
7 This bill was voted by the House, January 27, 1855, yeas 111, nays 77, and by the Senate, February 6th, yeas 28, nays 17, but was vetoed by President Pierce as a House bill; and the House vote on the veto was yeas 113, nays 86,—not two thirds,—so the bill was lost.
8 This bill was voted by the Senate, January 10, 1859, yeas 26, nays 20.

NO PROPERTY IN MAN:

UNIVERSAL EMANCIPATION WITHOUT COMPENSATION.

SPEECH IN THE SENATE, ON THE CONSTITUTIONAL AMENDMENT ABOLISHING SLAVERY THROUGHOUT THE UNITED STATES, APRIL 8, 1864.

The property in horses was the gift of God to man at the creation of the world; the property in slaves is property held and acquired by crime, differing in no moral aspect from the pillage of a freebooter, and to which no lapse of time can give a prescriptive right. — JOHN QUINCY ADAMS, *Speech at Bridgewater*, November 6, 1844.

Swift with her wand she issued and unclosed
The loathsome sties wherein the swine reposed.
. . . . . .
They men became, but younger than before,
More beauteous far, and far majestic more.
Odyssey, tr. SOTHEBY, Book X. 398 - 407.

The Christian religion is equal in its operation, and is accommodated to every nation on the globe. It robs no one of his freedom, violates none of his inherent rights, on the ground that he is a slave by nature, as pretended; and it well becomes your Majesty to banish so monstrous an oppression from your kingdoms in the beginning of your reign, that the Almighty may make it long and glorious. — LAS CASAS, *Address before Charles V.: Prescott's History of the Conquest of Mexico*, Vol. I. p. 379, Note.

In a clause of his will Cortés expresses a doubt whether it is right to exact personal service from the natives, and commands that a strict inquiry shall be made into the nature and value of such services as he had received, and that in all cases a fair compensation shall be allowed for them. Lastly, he makes this remarkable declaration: "It has long been a question, whether one can conscientiously hold property in Indian slaves. Since this point has not yet been determined, I enjoin it on my son Martin and his heirs that they spare no pains to come to an exact knowledge of the truth, as a matter which deeply concerns the conscience of each of them, no less than mine." — CORTÉS, *his Testament:* Ibid., Vol. III. p. 345.

Mais certes, s'il y a rien de clair et d'apparent en la nature, et en quoy il ne soit pas permis de faire l'aveugle, c'est cela que nature, le ministre de Dieu et la gouvernante des hommes, nous a tous faits de mesme forme, et, comme il semble, à mesme moule, afin de nous entrecognoistre tous pour compaignons, ou plus tost freres. — LA BOËTIE, *De la Servitude Volontaire:* Œuvres, ed. Feugère, (Paris, 1846,) p. 26.

Quand est-ce donc un homme de Dieu goûtera le plaisir de la liberté dans toute son étendue? Quand il ne la goûtera que dans ses frères affranchis. — BOSSUET, *Panégyrique de Saint Pierre Nolasque*, Point II.

Et qu'on ne dise pas, qu'en supprimant l'esclavage, le Gouvernement violeroit la propriété des colons. Comment l'usage, ou même une loi positive, pourroit-elle jamais donner à un homme un véritable droit de propriété sur le travail, sur la liberté, sur l'être entier d'un autre homme innocent, et qui n'y a point consenti? En déclarant les nègres libres, *on n'ôteroit pas au colon sa propriété;* on l'empêcheroit de faire un crime, et l'argent qu'on a payé pour un crime n'a jamais donné le droit de le commettre. — CONDORCET, *Note* 109 *sur les Pensées de Pascal.*

Allegiance to that Power that gives us the *forms* of men commands us to maintain the *rights* of men: and never yet was this truth dismissed from the human heart, — never in any time, in any age, — never in any clime

where rude man ever had any social feeling, or where corrupt refinement had subdued all feelings; never was this one unextinguishable truth destroyed from the heart of man, placed as it is in the core and centre of it by his Maker, that man was not made the property of man. — RICHARD BRINSLEY SHERIDAN, *Speech on the Trial of Warren Hastings*, June 6, 1788: *Moore's Memoirs of Sheridan* (London, 1825), Vol. I. p. 505.

In each of these cases [the United States and Russia] the slaves and the serfs are not ripe for freedom; no enslaved people ever are; and to wait, before you bestow liberty or political rights, till the recipients are fit to employ them aright, is to resolve not to go into the water till you can swim. You must make up your mind to encounter many very considerable evils at first, and for some time, while men are learning to use the advantages conferred on them. — ARCHBISHOP WHATELY, *Annotations to Bacon's Essays:* Essay XXI., *Of Delays.*

Non-seulement ma liberté est à moi, par la seule grâce de Dieu, comme ma vie, et personne n'en peut disposer à ma place, mais je ne suis pas maître d'en disposer moi-même. Ce n'est pas assez de dire, que la liberté est un droit: la liberté est un devoir. — JULES SIMON, *La Liberté*, Tom. I. p. 26.

THE first public movement for an Amendment of the National Constitution, abolishing Slavery, was a resolution presented by the devoted Abolitionist, Henry C. Wright, and adopted by the American Antislavery Society at its anniversary meeting in Philadelphia, December 4, 1863. In a letter to Mr. Sumner, January 13, 1870, Mr. Wright recounted the history of this resolution, which he set forth, prefixing the original in the handwriting of Mr. Sumner: —

"That the voice of the people is heard through petitions to Congress, and this Convention earnestly recommend that this voice be raised in petitions for an Amendment of the Constitution, declaring that Slavery shall be forever prohibited within the limits of the United States.

"CHARLES SUMNER.

"ON BOARD OF STEAMBOAT EMPIRE STATE."

Mr. Wright adds: —

"This is in your hand. On the back, in my hand, are the words: 'Saloon of Steamer Empire State, on Long Island Sound, Wednesday, A. M., December 2, 1863. Adopted by the American Antislavery Society, at its thirtieth anniversary or third decade meeting, held in Philadelphia, December 3d and 4th, 1863. Adopted December 4th, Friday. Presented by Henry C. Wright, of Boston, and adopted by the Society without a dissenting voice.'

"HENRY C. WRIGHT."

Mr. Wright afterwards communicated these facts to the press.

December 14, 1863, in the House of Representatives, Mr. Ashley, of Ohio, introduced a Constitutional Amendment abolishing Slavery, in these terms: —

"Slavery is hereby forever prohibited in all the States of the Union, and in all Territories now owned or which may hereafter be acquired by the United States."

On the same day, Mr. Wilson, of Iowa, introduced another, in these terms: —

"Slavery, being incompatible with a free Government, is forever prohibited in the United States, and involuntary servitude shall be permitted only as a punishment for crime."

January 11, 1864, in the Senate, Mr. Henderson, of Missouri, proposed the following amendment: —

"Slavery or involuntary servitude, except as a punishment for crime, shall not exist in the United States."

This was referred to the Committee on the Judiciary.

February 8th, while the Committee had the question still under consideration, Mr. Sumner proposed an Amendment as follows: —

"ARTICLE —. Everywhere within the limits of the United States, and of each State or Territory thereof, all persons are equal before the law, so that no person can hold another as a slave."

Mr. Sumner moved the reference of the joint resolution containing his Amendment to the Select Committee on Slavery and Freedmen, of which he was Chairman. Mr. Trumbull thought it had better go to the Committee on the Judiciary, to which the other proposition had been referred. Mr. Sumner remarked, that already petitions against the Fugitive Slave Act had been reported from the Committee on the Judiciary with the recommendation that they be referred to the other Committee, that the terms of the resolution raising this Committee were broad enough to cover every proposition relating to Slavery, and that, in fact, petitions relating to a Constitutional Amendment had already been referred to this Committee. If after this statement the Senator desired that the joint resolution should be referred to the Committee of which he was the honored head, Mr. Sumner consented with the greatest pleasure. Mr. Trumbull expressed the opinion that "the appropriate Committee for all propositions to change the Constitution was the Judiciary Committee," and in this opinion Mr. Doolittle concurred. Mr. Sumner was perfectly willing to follow the suggestion made. His chief desire was that the Committee would "act upon it soon."

Meanwhile Mr. Saulsbury, of Delaware, moved that the joint resolution be indefinitely postponed, which was lost, — Yeas 8, Nays 31. It was then referred to the Committee on the Judiciary.

February 10th, Mr. Trumbull reported back the two joint resolutions, and the various petitions on the subject, with a substitute, as an amendment to the joint resolution of Mr. Henderson, in the following terms: —

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation."

February 17th, Mr. Sumner, inferring from the report of the Committee a disposition to follow the Ordinance for the Northwest Terri-

tory, and also thinking it desirable to expel from the Constitution clauses alleged to concern Slavery, gave notice of the following substitute, the first clause of which is modelled precisely on the famous prohibition in the Ordinance.

"ARTICLE 13.

"SECTION 1. There shall be neither slavery nor involuntary servitude anywhere in the United States, or within the jurisdiction thereof, otherwise than in the punishment of crimes whereof the party shall have been duly convicted; and the Congress may make all laws which shall be necessary and proper to enforce this prohibition.

"SECTION 2. In the third paragraph of the second section of the first article, concerning the apportionment of Representatives, the following words shall be struck out, so as to be no longer a part of the Constitution, namely: 'Which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons,' except the words 'excluding Indians not taxed,' which shall be allowed to remain, so that the whole clause shall read: 'Representatives and direct taxes shall be apportioned among the several States which may be included within this Union according to their respective numbers, excluding Indians not taxed.'

"SECTION 3. The whole of the third paragraph of the second section of the fourth article, in the words hereto appended, shall be struck out, so as to be no longer a part of the Constitution, namely: 'No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.'"

March 28th, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, the pending question being the substitute of the Committee. Mr. Trumbull opened the debate by an elaborate speech, in which he said: "If we are to get rid of the institution of Slavery, we must have some more efficient way of doing it than by the Proclamations that have been issued or the Acts of Congress which have been passed. . . . . Sir, in my judgment, the only effectual way of ridding the country of Slavery, and so that it cannot be resuscitated, is by an Amendment of the Constitution, forever prohibiting it within the jurisdiction of the United States. It is reasonable to suppose, that, if this proposed Amendment passes Congress, it will within a year receive the ratification of the requisite number of States to make it a part of the Constitution. That accomplished, and we are forever freed of this troublesome question. . . . . We take this question entirely away from the politics of the country; we relieve Congress of sec-

tional strifes; and, what is better than all, we restore to a whole race that freedom which is theirs by the gift of God, but which we for generations have wickedly denied them." Mr. Wilson, of Massachusetts, made an effective speech, whose character appears in its title, as published: "The Death of Slavery is the Life of the Nation." Then followed, on successive days, speeches from Mr. Davis, of Kentucky, Mr. Saulsbury, of Delaware, Mr. McDougall, of California, Mr. Hendricks, of Indiana, and Mr. Powell, of Kentucky, all against the Amendment. Mr. Davis declared that "the most operative single cause of the pending war was the intermeddling of Massachusetts with the institution of Slavery," and it was an "objection of overruling weight, that no revision of the Constitution, in any form, ought to be undertaken under the auspices of the party in power." Mr. Saulsbury said: "Immediately after the Flood, the Almighty condemned a whole race to servitude. He said, 'Cursed be Canaan!'" In behalf of the Amendment were able speeches by Mr. Clark, of New Hampshire, Mr. Howe, of Wisconsin, Mr. Reverdy Johnson, of Maryland, Mr. Harlan, of Iowa, Mr. Hale, of New Hampshire, and Mr. Henderson, of Missouri.

April 8th, the last day of debate, Mr. Sumner made the speech which follows this Introduction.

During the discussion there were several votes. Mr. Davis moved as a substitute, "No negro, or person whose mother or grandmother is or was a negro, shall be a citizen of the United States, or be eligible to any civil or military office or to any place of trust or profit under the United States." This was lost, — Yeas 5, Nays 32. Mr. Davis then proposed to add to the first section of the proposed article: "But no slave shall be entitled to his or her freedom under this Amendment, if resident, at the time it takes effect, in any State the laws of which forbid free negroes to reside therein, until removed from such State by the Government of the United States." This was rejected without a division. Mr. Davis further proposed to add at the end of the second section, that, "when this Amendment of the Constitution shall have taken effect by freeing the slaves, Congress shall provide for the distribution and settlement of all the population of African descent in the United States among the several States and Territories in proportion to the white population of each State and Territory." This also was rejected without a division, as was another Amendment by him concerning the election of President and Vice-President. Mr. Powell moved to add to the first section: "No slave shall be emancipated by this article, unless the owner thereof shall be first paid the value of the slave or slaves so emancipated." This was rejected, — Yeas 2, Nays 34.

Mr. Sumner offered his substitute in these terms: —

"All persons are equal before the law, so that no person can hold another as a slave; and the Congress may make all laws necessary and proper to carry this article into effect everywhere within the United States and the jurisdiction thereof."

Concerning the Amendment of the Committee he remarked: —

"It starts with the idea of reproducing the Jeffersonian Ordinance. I doubt the expediency of reproducing that Ordinance. It performed an excellent work in its day, but there are words in it which are entirely inapplicable to our time. They are the limitation, 'otherwise than in the punishment of crimes whereof the party shall have been duly convicted.' Now, unless I err, there is an implication from those words that men may be enslaved as a punishment of crimes whereof they shall have been duly convicted. There was a reason for that at the time; for I understand that it was the habit in certain parts of the country to doom persons as slaves for life as a punishment for crime, and it was not proposed to prohibit this habit. But Slavery in our day is something distinct, perfectly well known, requiring no words of distinction outside of itself. Why, therefore, add the words, 'nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted'? To my mind they are entirely surplusage. They do no good there, but absolutely introduce a doubt.

"In placing a new and important text in our Constitution we cannot be too careful. We should consider well that the language adopted in this Chamber to-day will in all probability be adopted in the other House, and it must be adopted, also, by three fourths of the Legislatures of the States. Therefore we have every motive, the strongest inducement in the world, to make that language as perfect as possible. I do not hesitate to say, that I object to the Jeffersonian Ordinance, even if presented here in its original text. But now I am brought to the point that the proposition of the Committee is not the Jeffersonian Ordinance, except in its bad feature. In other respects, it discards the language of the Jeffersonian Ordinance, and also its collocation of words."

Mr. Trumbull replied, that the Committee, upon discussion and examination, had come to their conclusion. "I do not know," he said, "that I should have adopted these precise words, but a majority of the Committee thought they were the best words; they accomplish the object; and I cannot see why the Senator from Massachusetts should be so pertinacious about particular words." He hoped Mr. Sumner would withdraw his proposition.

Mr. Howard, of Michigan, wished as much as Mr. Sumner to use significant language that cannot be mistaken or misunderstood; but he preferred to dismiss all reference to French constitutions or French

codes, and "go back to the good old Anglo-Saxon language employed by our fathers in the Ordinance of 1787, an expression which has been adjudicated upon repeatedly, which is perfectly well understood both by the public and by judicial tribunals."

Mr. Sumner withdrew his proposition, which he called a "suggestion" only, and also "a sincere effort to contribute as much as he could to improve the proposition in form," but could not resist the appeal of his friend, the Chairman of the Committee. He forbore to press any amendment.

Mr. Sumner often regretted that he had not insisted upon a vote on striking out the clause giving implied sanction to slavery or involuntary servitude as "a punishment for crime."

April 8th, on the passage of the joint resolution, the vote stood, Yeas 38, Nays 6, when the Vice-President announced that the joint resolution, having received the concurrence of two thirds of the Senators present, was passed.

May 31st, the joint resolution was taken up in the House of Representatives. Mr. Holman, of Indiana, objected to its second reading, and the Speaker stated the question, "Shall the joint resolution be rejected?" On this question the vote stood, Yeas 55, Nays 76; and the joint resolution was not rejected. An excited debate occupied several days.

June 15th, the vote was taken, and it stood, Yeas 95, Nays 66, not voting 21. So the joint resolution failed, two thirds not voting in its favor. Mr. Ashley, of Ohio, a most strenuous supporter of the Constitutional Amendment, changed his vote from the affirmative to the negative, so as to move a reconsideration, which motion he made in the evening, and it was duly entered on the Journal, thus holding the joint resolution in suspense. The session of Congress closed without further action.

At the next session the President in his Annual Message reminded Congress of the pending Constitutional Amendment, and recommended its "reconsideration and passage," adding, that by the recent election the will of the majority was "most clearly declared in favor of such Constitutional Amendment." January 6, 1865, on motion of Mr. Ashley, the House of Representatives took up his motion to reconsider the vote of rejection. The debate, which was opened by him in an earnest speech, proceeded, with some interruptions, until January 31st, when he called the previous question on the motion. Mr. Stiles, of Pennsylvania, moved to lay the motion to reconsider on the table, which was lost, — Yeas 57, Nays 111. The previous question was then ordered. On the motion to reconsider, the vote stood, Yeas 112, Nays 57, not

voting 13; but, a majority being sufficient for this purpose, the motion to reconsider was agreed to. The question then recurred on the passage of the joint resolution, when, on motion of Mr. Ashley, the previous question was ordered. Before this was done, he stated that to hasten a vote he had declined speaking. Mr. Brown, of Wisconsin, asked him to yield, so that he might "offer a substitute for the joint resolution." Mr. Ashley could not yield; he had a substitute himself, which he should much prefer to the original joint resolution, but he did not offer it. On its final passage the vote stood, Yeas 119, Nays 56, not voting 8. So the two thirds required by the Constitution having voted in its favor, the joint resolution was passed.

All possible preparation had been made for the vote, and the attendance was unusually large, both of Representatives and spectators. The people throughout the country awaited the result with profound interest. The announcement by the Speaker was received with an outburst of enthusiasm in the Chamber. The Republican Representatives sprang to their feet and applauded with cheers and clapping of hands. The spectators in the crowded galleries followed the example, and for several minutes the Chamber was a scene of joy and congratulation. Mr. Ingersoll, of Illinois, then said, "In honor of this immortal and sublime event, I move that the House do now adjourn"; and the House adjourned.

The joint resolution submitting the Constitutional Amendment bears date February 1, 1865. It now remained that the Amendment should be ratified by the Legislatures of three fourths of the several States, there being at the time thirty-six. A certificate, announcing that this had been done, was issued by the Secretary of State, December 18, 1865, and from this date the Amendment became part of the Constitution. President Lincoln, who had watched this event with absorbing interest, did not live to witness the final result.

Mr. Sumner saw so clearly the delay incident to a Constitutional Amendment, and even the uncertainty with regard to its passage by Congress and adoption by the States, that, while supporting it cordially, he did not relax meanwhile his efforts for Congressional legislation against Slavery. Even if Congress could not be induced, in the exercise of its powers, to decree the death of the public enemy, he hoped that at least it would not hesitate to use all other powers to limit and weaken it, so that, should the Constitutional Amendment fail, or be postponed, Slavery would be in a condition from which it could not recover. His main postulate, that Slavery was contrary to Nature, and an outlaw, was important in sustaining action against it, whether by Constitutional Amendment or Congressional legislation. In the

course of debate on another question, Mr. Sherman spoke incidentally of the Constitutional Amendment as "the main proposition," when Mr. Sumner at once remarked: —

"The main proposition, Sir, is to strike Slavery wherever you can hit it; and I tell the Senator he will not accomplish his purpose, if he contents himself merely with a Constitutional Amendment. I am for a Constitutional Amendment; I have made the proposition in several forms: but how long will it take to carry that Amendment through both Houses of Congress, and then carry it to its final consummation in the votes of the Legislatures of three fourths of the several States, according to the requirements of the Constitution? Are we to postpone action on all these questions until that possibly distant day? No, Sir!" [1]

The speech which follows was published originally under the title, "Universal Emancipation without Compensation." In the edition of the Loyal Publication Society of New York the title was "No Property in Man." These two titles present fundamental principles of special significance at that time. They were in the nature of answer to the clamor for compensation.

[1] Congressional Globe, 38th Cong. 1st Sess., p. 1178, March 18, 1864. See, also, p 1180.

SPEECH.

MR. PRESIDENT, — If an angel from the skies or a stranger from another planet were permitted to visit this earth and to examine its surface, who can doubt that his eyes would rest with astonishment upon the outstretched extent and exhaustless resources of this republic, young in years, but already rooted beyond any dynasty in history? In proportion as he considered and understood all that enters into and constitutes the national life, his astonishment would increase, for he would find a numerous people, powerful beyond precedent, without king or noble, but with the schoolmaster instead. And yet the astonishment he confessed, as all these things unrolled before him, would swell into marvel, as he learned that in this republic, arresting his admiration, where is neither king nor noble, but the schoolmaster instead, there are four million human beings in abject bondage, degraded to be chattels, under the pretence of property in man, driven by the lash like beasts, despoiled of all rights, even the right to knowledge and the sacred right of family, so that the relation of husband and wife is impossible and no parent can claim his own child, while all are condemned to brutish ignorance. Startled by what he beheld, the stranger would naturally inquire by what

authority, under what sanction, and through what terms of law or constitution, this fearful inconsistency, so shocking to human nature itself, continues to be upheld. His growing wonder would know no bound, when he was pointed to the Constitution of the United States, as final guardian and conservator of this peculiar and many-headed wickedness.

"And is it true," the stranger would exclaim, "that, in laying the foundations of this republic dedicated to human rights, all these wrongs were positively established?" He would ask to see that Constitution, and to know the fatal words by which the sacrifice was commanded. The trembling with which he began its perusal would be succeeded by joy as he finished; for he would find nothing in that golden text, not a single sentence, phrase, or word even, to serve as origin, authority, or apology for the outrage. And then his wonder, already knowing no bound, would break forth anew, as he exclaimed, "Shameful and irrational as is Slavery, it is not more shameful or irrational than the unsupported interpretation which makes your Constitution final guardian and conservator of this terrible and unpardonable apostasy."

Such a stranger, coming from afar, with eyes that no local bias had distorted, and with understanding no local custom had disturbed, would naturally see the Constitution in its precise text, and would interpret it in its true sense, without prepossession or prejudice. Of course he would know, what all jurisprudence teaches and all reason confirms, that human rights cannot be taken away by any indirection, or by any vain imagining of something intended, but not said, and, as a natural consequence, that Slavery exists, if exist it can

at all, only by virtue of *positive text*, and that what is true of Slavery is true also of all its incidents; and the enlightened stranger would insist, that, in every interpretation of the Constitution, that cardinal principle must never for a moment be out of mind, but must be kept ever forward as guide and master, that *Slavery cannot stand on inference*, nor can any support of Slavery stand on inference. Thus informed, and in the light of pervasive principle, —

"How far that little candle throws his beams!" —

he would peruse the Constitution from beginning to end, from its opening Preamble to its final Amendment, and then the joyful opinion would be given.

There are three things he must observe: first and foremost, that the dismal words "Slave" and "Slavery" do not appear in the Constitution; so that, if the unnatural pretension of property in man lurk anywhere in that text, it is under a feigned name, or an *alias*, which is cause of suspicion, while an imperative rule renders its recognition impossible. Next, he would consider the Preamble, which is the key to open the whole succeeding instrument; but here no single word is found which does not open the Constitution to Freedom and close it to Slavery. The object of the Constitution is announced to be "in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity"; all of which, in every particular, is absolutely inconsistent with Slavery. And, thirdly, he would observe those time-honored, most efficacious, chain-breaking words in the Amendments: "*No person*

shall be deprived of life, *liberty*, or property, *without due process of law.*" Scorning all false interpretations and glosses fastened upon the Constitution in support of Slavery, and with these three things before him, he would naturally declare that there was nothing in the original text on which this appalling wrong could be founded anywhere within the sphere of its operation. With wonder he would ask again by what strange delusion or hallucination the reason had been so far overcome as to recognize Slavery in the Constitution, when plainly it is not there, and cannot be there. The answer is humiliating, but easy.

People find in texts of Scripture the support of their own religious opinions or prejudices; and, in the same way, they find in texts of the Constitution the support of their political opinions or prejudices. And this may not be in either case because Scripture or Constitution, when truly interpreted, supports such opinions or prejudices, but because people are apt to find in texts simply a reflection of themselves. Most clearly and indubitably, whoever finds support of Slavery in the National Constitution has first found such support in himself: not that he will hesitate, perhaps, to condemn Slavery in words of approved gentleness, but because, from unhappy education, or more unhappy insensibility to the wrong, he has already conceded to it a certain traditional foothold of immunity, which he straightway transfers from himself to the Constitution. In dealing with this subject, it is not the Constitution, so much as human nature itself, which is at fault. Let the people change, and the Constitution will change also; for the Constitution is but the shadow, while the people are the substance.

Thank God, under influence of the struggle for national life, and in obedience to its incessant exigencies, the people have changed, and in nothing so much as on Slavery. Old opinions and prejudices have dissolved, and that traditional foothold Slavery once possessed is gradually weakening, until now it scarcely exists. Naturally this change must sooner or later show itself in the interpretation of the Constitution. But it is already visible even there, in the concession of powers over Slavery formerly denied. The time, then, has come when the Constitution, so long interpreted for Slavery, may be interpreted for Freedom. This is one stage of triumph. Universal emancipation, which is at hand, can be won only by complete emancipation of the Constitution itself, which has been so long degraded to wear chains that its real character is scarcely known.

Sometimes the concession is made on the ground of *military necessity*. The capacious war powers of the Constitution are invoked, and it is said that in their legitimate exercise Slavery may be destroyed. There is much in this concession, — more even than is imagined by many from whom it proceeds. It is war, say they, which puts these powers in motion; but they forget, that, wherever Slavery exists, there is perpetual war, — that Slavery itself is a *state of war* between two races, where one is for the moment victor, — pictured accurately by Jefferson as "permitting one half the citizens to trample on the rights of the other, transforming those into despots and these into enemies."[1] Therefore, wherever Slavery exists, even in seeming peace, the war powers may be invoked to terminate a condition which is in-

[1] Notes on Virginia, Query XVIII.: Writings, Vol. VIII. p. 403.

ternecine, and to overthrow pretensions hostile to every attribute of the Almighty.

It is not on military necessity alone that the concession is made. Many, as they read the Constitution now, see its powers over Slavery more clearly than before. The old superstition is abandoned; and they join with Patrick Henry, when, in the Virginia Convention, he declared the power of manumission accorded to Congress. He did not hesitate to argue against the adoption of the Constitution, because it accorded this power. And shall we be less perspicacious for Freedom than this Virginia statesman for Slavery? Discerning the power, he confessed his dismay: let us confess our joy.

We have already seen that Slavery finds no support in the Constitution. Glance now at positive provisions by which it is brought completely under control of Congress.

1. First among the powers of Congress, and associated with the power to lay and collect taxes, is that to "provide for the common defence and general welfare." It is questioned whether this is a substantive power, or simply incident to that with which it is associated. But it is difficult, if not absurd, to insist that Congress has not this substantive power. Shall it not provide for the common defence? Shall it not regard the general welfare? If powerless to do these things in a great crisis, it had better abdicate. In the Virginia Convention, Mr. George Mason, a most decided opponent of the Constitution, said: "That Congress should have power to provide for the general welfare of the Union *I grant.*" [1] The language of Patrick Henry, to which allusion has just been made, was more explicit. He foresaw that

[1] Elliot's Debates (2d edit.), Vol. III. p. 442.

this power would be directed against Slavery, and did not hesitate to declare: —

"Slavery is detested. We feel its fatal effects. We deplore it with all the pity of humanity. Let all these considerations, at some future period, press with full force on the minds of Congress; let that urbanity which, I trust, will distinguish America, and the necessity of national defence, — let all these things operate on their minds; they will search that paper [the Constitution] and see if they have power of manumission. And have they not, Sir? Have they not power *to provide for the general defence and welfare?* May they not think that these call for the abolition of slavery? May they not pronounce all slaves free? And will they not be warranted by that power? This is no ambiguous implication or logical deduction. *The paper speaks to the point. They have the power in clear, unequivocal terms, and will clearly and certainly exercise it.*" [1]

Language could not be more positive. To all who ask for the power of Congress over Slavery, here is a sufficient answer; and remember that this is not my speech, but the speech of Patrick Henry, who says that the Constitution "speaks to the point."

2. Next comes the fountain, "Congress shall have power to declare war, to raise and support armies, to provide and maintain a navy." A power like this is from its nature unlimited. In raising and supporting an army, in providing and maintaining a navy, Congress is not restricted to any particular class or color. It may call upon all, and authorize that *contract* which the Government makes with an enlisted soldier. But such contract would be in itself an act of manumission;

[1] Elliot's Debates (2d edit.), Vol. III. p. 590.

for a slave cannot make a contract. And if the contract be followed by actual service, who can deny its completest efficacy in enfranchising the soldier-slave and his whole family? Shakespeare, immortal teacher, gives expression to an instinctive sentiment, when he makes Henry the Fifth, on the eve of the victory at Agincourt, encourage his men by promising,—

> "For he to-day that sheds his blood with me
> Shall be my brother; be he ne'er so vile,
> This day shall gentle his condition."

3. There is still another clause: "The United States shall guaranty to every State in this Union *a republican form of government.*" Here again is a plain duty. But the question recurs, What is a republican form of government? John Adams, in the correspondence of his old age, says:—

"The customary meanings of the words *republic* and *commonwealth* have been infinite. They have been applied to every government under heaven, — that of Turkey and that of Spain, as well as that of Athens and of Rome, of Geneva and San Marino." [1]

But the guaranty of a republican form of government must have a meaning congenial with the purposes of the Constitution. If a government like that of Turkey, or even that of Venice, could come within the scope of this guaranty, it would be of little value; it would be words, and nothing more. Evidently, it must be construed so as to uphold the Constitution, according to all the promises of its Preamble; and Mr. Madison has left a record, first published to the Senate by the distinguished Senator from Vermont [Mr. COLLAMER],

[1] Works, Vol. X. pp. 377, 378.

of the Committee on the Library, showing that it was originally suggested in part by the fear of Slavery,[1] so that in construing it we must not forget the disturbing influence. The Preamble and the record are important, disclosing the real intention. But no American need be at loss to designate some of the distinctive elements of a republic, according to the idea of American institutions. These are found, first, in the Declaration of Independence, by which it is solemnly announced "that all men are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." And they are found, secondly, in that other guaranty and prohibition of the Constitution, in harmony with the Declaration: "*No person* shall be deprived of life, *liberty*, or property, *without due process of law*." Such are essential elements of "a republican form of government," which cannot be disowned without disowning the very muniments of our liberties; and these the United States are bound to guaranty. But all these, when set in motion, make Slavery impossible. It is idle to say that this result was not anticipated. It would be, then, only another illustration that our fathers "builded better than they knew."

4. Independent of the guaranty, there is the other clause just quoted, in itself a source of power: "*No person* shall be deprived of life, *liberty*, or property, *without due process of law*." This was part of the Constitutional Amendments proposed by the First Congress, un-

[1] Notes on the Confederacy, April, 1787: Madison's Letters and other Writings, Vol. I. p. 322. Congressional Globe, 37th Cong. 2d Sess., p. 1808, April 24, 1862.

der the popular demand for a Bill of Rights. Though brief, it is a whole Bill of Rights. Liberty can be lost only by "due process of law," — words borrowed from the ancient liberty-loving Common Law, illustrated by our master in law, Lord Coke, but best explained by the late Mr. Justice Bronson, of New York, in a judicial opinion: —

"The meaning of the section, then, seems to be, that *no member of the State shall be disfranchised, or deprived of any of his rights or privileges*, unless the matter shall be adjudged against him upon trial had according to the course of the Common Law. . . . . The words 'due process of law,' in this place, cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property." [1]

Such is the protection thrown by the Constitution over every "person," without distinction of race or color, class or condition. There can be no doubt about the universality of the protection. All, without exception, come within its scope. The natural meaning is plain; but there is an incident of history which makes it plainer still, excluding all possibility of misconception. A clause of this character was originally recommended as an Amendment by two Slave States, Virginia and North Carolina, and by a slave-trading State, Rhode Island; but it was restricted by them to *freemen*, thus: "No *freeman* ought to be deprived of his life, *liberty*, or property, but by *the law of the land*." [2] When the recommendation came before Congress, the word "person"

[1] Taylor *v.* Porter, 4 Hill, R., 146, 147.

[2] Elliot's Debates (2d edit.), Vols. I. p. 334, III. p. 658, IV. p. 243.

was substituted for "freeman," and the more searching phrase "due process of law" was substituted for "the law of the land." In making this change, rejecting the recommendation of slave-owning and slave-trading States, the authors of this Amendment revealed their purpose, that *no person* wearing the human form should be deprived of *liberty* without due process of law; and the proposition was adopted by the votes of Congress, and then of the States, as part of the Constitution. Clearly, on its face, it is an express guaranty of personal liberty, and an express prohibition of its invasion anywhere.

In the face of this guaranty and prohibition, — for it is both, — how can any "person" be held as slave? Sometimes it is argued that this provision must be restricted to places within the exclusive jurisdiction of the National Government. Such formerly was my own impression, often avowed in this Chamber; but I never doubted its complete efficacy to render Slavery unconstitutional in all such places, so that "no person" could be held as a slave at the national capital or in any national territory. Constitutionally, Slavery has always been an outlaw, wherever that provision of the Constitution was applicable. Nobody doubted that it was binding on the national courts; and yet it was left unexecuted, a dead letter, killed by the predominant influence of Slavery, until at last Congress was obliged by legislative act to do what the courts failed to do, and to terminate Slavery in the national capital and national territories.

In this transcendent guaranty and prohibition there are no words of exclusive jurisdiction. All is broad and general as the Constitution itself; and since this

provision is in support of human rights, it cannot be restricted by any interpretation. There is no limitation in it, and nobody can supply any such limitation, without encountering the venerable maxim of law, *Impius et crudelis qui Libertati non favet*, — "Impious and cruel is he who does not favor Liberty." Long enough have courts and Congress merited this condemnation. The time has come when they should merit it no longer. The Constitution should become a living letter under the predominant influence of Freedom. This conviction has brought petitioners to Congress, during the present session, asking that the Constitution shall be simply executed against Slavery, and not altered. Ah, Sir, it would be a glad sight to see that Constitution, which we have all sworn to support, interpreted generously, nobly, gloriously for Freedom, so that everywhere within its influence the chains should drop from the slave! If it be said that this was not anticipated at its adoption, I remind you of Patrick Henry, when, at the time, he said, "The paper speaks to the point." No doubt, it does speak to the point, especially with the Amendments immediately thereafter adopted. Cicero preferred to err with Plato rather than to think right with other men. And pardon me, if, when my country is in peril from Slavery, and human rights are to be rescued, I prefer to err with Patrick Henry, in assuming power for Freedom, rather than to think right with Senators who hesitate in such a cause.

Mr. President, thus stands the case. There is nothing in the Constitution on which Slavery can rest, or find any the least support. Even on the face of that instrument it is an *outlaw;* but if we look further

into its provisions, we find at least four distinct sources of power, which, if executed, must render Slavery impossible, while the Preamble makes them all vital for Freedom: first, the power to provide for the common defence and general welfare; secondly, the power to raise armies and maintain navies; thirdly, the power to guaranty a republican form of government; and, fourthly, the power to secure *Liberty* against all restraint without due process of law. But all these provisions are something more than powers; *they are duties also.* And yet we are constantly and painfully reminded that pending measures against Slavery are unconstitutional. Sir, this is an immense mistake. *Nothing against Slavery can be unconstitutional.* It is hesitation that is unconstitutional.

And yet Slavery still exists, in defiance of all these requirements; nay, more, in defiance of reason and justice, which can never be disobeyed with impunity, it exists, the perpetual spoiler of human rights and disturber of the public peace, degrading master as well as slave, corrupting society, weakening government, impoverishing the very soil itself, and impairing the natural resources of the country. Such an outrage, so offensive in every respect, not only to the Constitution, but also to the whole system of order by which the universe is governed, can be nothing but *a national nuisance*, which, for the general welfare, and in the name of justice, ought to be abated. But at this moment, when it menaces the national life, it is not enough to treat Slavery merely as a nuisance, for it is much more. It is a public enemy and traitor, wherever it shows itself, to be subdued, in the discharge of solemn guaranties of Government, and in the exercise of unquestionable and

indefeasible rights of self-defence. All now admit that in the Rebel States it is *a public enemy and traitor*, so that the Rebellion is seen in Slavery, and Slavery is seen in the Rebellion. But Slavery throughout the country, everywhere within the national limits, is a living Unit, one and indivisible, — and thus even outside the Rebel States it is the same public enemy and traitor, lending succor to the Rebellion, and holding out "blue lights" to encourage and direct its operations. But whether national nuisance or public enemy and traitor, it is obnoxious to the same judgment, and must be abolished.

If, in abolishing Slavery, injury were done to the just interests of any human being, or to rights of any kind, there might be something to "give us pause," even against these irresistible requirements. But nothing of the kind can ensue. No just interests and no rights can suffer. It is the rare felicity of such an act, as well outside as inside the Rebel States, that, while striking a blow at the Rebellion, and assuring future tranquillity, so that the Republic shall be no longer a house divided against itself, it will add at once to the value of the whole fee simple wherever Slavery exists, will secure individual rights, and will advance civilization itself.

There is another motive at this time. Embattled armies stand face to face, one side fighting for Slavery. The gauntlet that has been flung down we have taken up in part only. Abolishing Slavery entirely, we take up the gauntlet entirely. Then can we look with confidence to Almighty God for His blessing upon our arms. "Till America comes into this measure," said John Jay during the Revolution, "her prayers to Heaven for Liberty will be impious."[1] So long as we sustain Slavery,

[1] Letter to Egbert Benson, 1780: Life, by his Son, Vol. I. pp. 229, 230.

so long as we hesitate to strike at Slavery, the heavy battalions of our armies will fail. Sir Giles Overreach, attempting to draw his sword, found it "glued to the scabbard with wronged orphans' tears." God forbid that our soldiers shall find their swords "glued" with the tears of the slave!

One question, and only one, rises in our path, — and this simply because the national representatives have been so long drugged and drenched with Slavery, which they have taken in all forms, whether of dose or douche, that, like a long-suffering patient, they are still sunk under its influence. I refer, of course, to the talk of compensation, under the shameful assumption that there can be property in man. Sir, there was a moment when I was willing to pay for Emancipation largely, or at least to any reasonable amount; but it was *as ransom*, and never as compensation. Thank God, that time has passed, never to return, — and simply because money is no longer needed for the purpose. Our fathers, under Washington, never paid the Algerines for our enslaved fellow-citizens, except as ransom; and they ceased all such tribute, when emancipation could be had without it. Such must be our rule. Any other would impoverish the Treasury for nothing. The time has come for the old tocsin to sound, "Millions for defence, not a cent for tribute!" Ay, Sir; millions of dollars — with millions of strong arms also — for defence against Slave-Masters; but not a cent for tribute to Slave-Masters.

If money is paid as compensation, clearly it cannot be awarded to the master, who for generations robbed the slave of his toil and all its fruits, so that, in justice, he may be treated as trustee of accumulated earnings with interest never paid over. Any money as compensation

must belong, every dollar, to the slave. If the case were audited in Heaven's chancery, there must be another allowance for prolonged denial of inestimable rights. Loss of wages may be estimated; but where is the tariff or price-current by which to determine those greater losses which have been the lot of every slave? Mortal arithmetic is impotent to assess the fearful sum-total. In presence of this infinite responsibility, the whole question must be referred to that other tribunal where master and slave are equal, while Infinite Wisdom tempers justice with mercy. There is a Persian tradition of Mahomet once saying that the greatest mortification at the Day of Judgment will be when the pious slave is carried to Paradise and the wicked master condemned to Hell.[1] It is only with finite powers that we on earth can imitate Divine Justice.

The theory of compensation is founded on the intolerable assumption of property in man, an idea which often intrudes into these debates, sometimes from open vindicators, and sometimes from others, who, while yielding, yet reluctantly yield, and thus their conduct is "sicklied o'er" with Slavery. Sir, parliamentary law must be observed; but, if in a parliamentary assembly indignant hisses are ever justifiable, they ought to break forth at every mention of this thing, whatever form it takes, — whether of arrogant claim, or mildest suggestion, or equivocal hint. Impious toward God, and infidel toward man, it is disowned by conscience and reason alike; nor is there any softness of argument or of phrase by which its essential wickedness can be disguised. "The fool hath said in his heart there is no God"; but it is kindred folly to say there is no Man.

[1] Saadi: The Gulistan, tr. Gladwin, Chap. VII., Tale 16.

The first is Atheism, and the second is like unto the first. If in this world a man owns anything, it is himself. This is his great patrimony, alike from his earthly father and his Father in Heaven. It is indefeasible and perpetual, — not to be sold, not to be bought. Always owning himself, he cannot be owned by another.[1]

No man can make black white or wrong right; nor can any Congress or any multitude overcome the everlasting law of justice.

According to a well-known and capital principle of jurisprudence, stolen property cannot be sold, and the attempt to sell it, knowing the primary abstraction, is a crime. The form of sale is impotent, and the title does not pass. Wherever he finds his property, the original owner may resume it as his own. The pawnbroker who has received it in pledge must release his hold; the purchaser who has paid the price must give it up. But can a stolen man be sold? Is there any form of sale which is not impotent to complete this great transfer, so as to give it the semblance of validity against the original owner? Can the title pass? Infinitely absurd and unnatural is the pretext that a man may reclaim his stolen coat wherever he finds it, but cannot reclaim himself! Is the coat more than the man? Slavery asserts that it is; and the whole country says the same, when it sanctions the return of a fugitive slave. But this pretension is only a further outgrowth of that appalling tyranny which begins by denying the right of a man to himself.

The Christian Church, by beautiful, glorious example,

[1] The famous device of Paracelsus was a mediæval verse, *Alterius non sit qui suus esse potest*, — meaning that no man who can be his own should be another's; which is good as far as it goes, but it does not disclose the whole truth.

testifies from earliest days against this pretension. Hermes, Prefect of Rome, converted to Christ, comes to church on Easter with twelve hundred and fifty slaves, whom after baptism he sets free. Chromatius, another Prefect of Rome, under Diocletian, also a convert, gives liberty after baptism to fourteen hundred, while he proclaims, "They who begin to be children of God must not be slaves of men." St. Germain, the admirable Bishop of Paris, on receiving alms, cries out, "Thanks be to God, we can now ransom a slave!" This list might be extended. Better even than such personal testimony is the same sentiment manifest in social institutions. St. Theodore, illustrious in the Eastern Church, imposed this rule upon its monasteries: "You must never employ slaves, neither in personal service, nor in affairs of the convent, nor in culture of the earth; *the slave is a man created in the image of God.*" The Church of the West was not less earnest. St. Benedict of Aniane, the second of the name in canonization, would not allow convents to be served by a slave. In the bosom of these retreats, as also in the priesthood, the former slave mingled with the former lord, nor was there any obstacle between him and the bishop's crosier. Onesimus, once the slave of Philemon, and hailed as brother beloved by Paul, is said to have become bishop of Ephesus.[1]

In the testimony of the Christian Church there is one character of precious example: I refer to Pope Gregory, justly meriting by his life the title of Great, which has been preserved by history. Through him England first tasted the blessings of Christianity. Fair-haired

[1] Cochin, L'Abolition de l'Esclavage, Tom II., 2me Partie, Liv. X. ch. 2, 3.

Saxons from the distant island, standing for sale in the market of Rome, enlisted his sympathy. When told that they were Angles, he exclaimed, "Not Angles, but Angels," — "*Non Angli, sed Angeli*," — and he insisted on their ransom and instruction to become the apostles of their countrymen. Under his auspices St. Augustin commenced the work, so that the conversion of England may be traced to the sympathies aroused by English slaves on the banks of the Tiber. A letter from St. Gregory shows the spirit in which he acted. Giving freedom to two bondmen, he wrote these commanding words: "Since our Redeemer, Maker of the whole creation, being hereto propitiated, has been pleased to assume human flesh, that, by the grace of his divinity, the chain of slavery wherewith we were held captive being broken, he might restore us to pristine liberty, it is well that men whom Nature from the beginning has brought forth free and the law of nations has subjected to the yoke of servitude, should by benefit of manumission be restored to the liberty wherein they were born."[1] And do not these words speak to us now?

Foremost of all in history who have vindicated human liberty, and associated their names with it forevermore, stands John Milton, Secretary of Oliver Cromwell, and author of "Paradise Lost." Cradled under a lawless royalty, he helped to found and support the English Commonwealth, while in all that he wrote he pleaded for human rights, — now in defence of the English people, who had beheaded their king, and now in immortal poems which show how wisely and well he loved the cause he had made his own. Nowhere has the assump-

[1] S. Gregorii Registrum Epistolarum, Lib. VI. Ep. 12: Opera Omnia, (Edit. Benedict., Parisiis, 1705,) Tom. II. col. 800.

tion of property in man been encountered more completely than in the conversation between the Archangel and Adam, after the former had pictured a hunter whose game was "men, not beasts":—

> "O execrable son, so to aspire
> Above his brethren, to himself assuming
> Authority usurped, from God not given!
> He gave us only over beast, fish, fowl
> Dominion absolute; that right we hold
> By His donation; but man over men
> He made not lord, such title to Himself
> Reserving, human left from human free."[1]

Every assertor of this property puts himself in the very place of the hunter of "men, not beasts," described as "execrable son, so to aspire." The language is not too strong. "Execrable" is the assumption,—"execrable" wherever made: "execrable" on the plantation, "execrable" in this Chamber, "execrable" in every form it takes, "execrable" in all its consequences, especially "execrable" as an apology for hesitation against Slavery. The assumption, wherever it shows itself, must be beaten down under our feet, like Satan himself, in whom it has its origin.

Again, we are brought by learned Senators to the Constitution, which requires that there shall be "just compensation," where "private property" is taken for public use. But, plainly, here the requirement is absolutely inapplicable, for there is no "private property" to take. Slavery is but a bundle of barbarous pretensions, from which certain persons are to be released. At what price shall the bundle be estimated? How much shall be paid for the controlling pretension of property in man? How much allowed for that other pretension to

[1] Paradise Lost, Book XII. 64–71.

shut the gates of knowledge, and keep the victim from the Book of Life? How much given for ransom from the pretension to rob a human being of his toil and all its fruits? And, Sir, what "just compensation" shall be voted for renouncing that Heaven-defying pretension, too disgusting to picture, which, trampling on the most sacred relations, makes wife and child the wretched prey of lust and avarice? Let these pretensions be renounced, and Slavery ceases to exist; but there can be no "just compensation" for any such renunciation. Heart, reason, religion, the Constitution itself, rise in judgment against it. As well vote "just compensation" to the hardened offender who renounces disobedience to the Ten Commandments, and promises that he will cease to steal, cease to commit adultery, and cease to covet his neighbor's wife! Ay, Sir, there is nothing in the Constitution to sanction any such outrage. Such an appropriation would be unconstitutional.

Mr. Madison said in the Convention that it was "wrong to admit in the Constitution the idea that there could be property in men."[1] Of course it was wrong. It was criminal and unpardonable. Thank God, it was not done. But Senators admit this "idea" daily. They take it from themselves, and then introduce it where Mr. Madison said it was "wrong." But if "wrong" at the adoption of the Constitution, how much worse now! There is no instinct of patriotism, as there is no conclusion of reason, which must not be against the abomination; and yet, Sir, it is allowed to enter into these debates. Sometimes it stalks, and sometimes

[1] Debates in the Federal Convention, August 25, 1787: Madison Papers, Vol. III. pp. 1429, 1430.

it skulks; but whether stalking or skulking, it must be encountered with the same indignant rebuke, until it ventures no longer to show its head.

Putting aside, then, all objection, whether from open opposition or lukewarm support, the great question recurs, that question which dominates this debate, How shall Slavery be overthrown? The answer is threefold: first, by the courts, declaring and applying the true principles of the Constitution; secondly, by Congress, in the exercise of the powers belonging to it; and, thirdly, by the people, through an Amendment of the Constitution. Court, Congress, people, all may be invoked; and the occasion justifies the appeal.

1. Let the appeal be made to the courts. But, alas! one of the saddest chapters in our history is the conduct of judges, lending themselves to the support of Slavery. Injunctions of the Constitution, guaranties of personal liberty, and prohibitions against its invasion have all been forgotten. Courts, which should be asylums of Liberty, have been changed into strongholds of Slavery; and the Supreme Court of the United States, by final decision as shocking to the Constitution as to the public conscience, proclaimed itself tutelary stronghold of all. It was part of the national calamity, that, under the influence of Slavery, Justice, like Astræa of old, fled. But now, at last, in a regenerated Republic, with Slavery waning, and the people rising in judgment against it, let us hope that the judgments of courts may be reconsidered, and the powers of the Constitution in behalf of Liberty fully exercised, so that human bondage shall no longer find an unnatural support from the lips of judges, —

"and ancient fraud shall fail,
Returning Justice lift aloft her scale."

Sir, no court can afford to do an act of wrong. Its business is justice; and when, under any apology, it ceases to do justice, it loses those titles to reverence otherwise so willingly bestowed. There are instances of great magistrates openly declaring disobedience to laws "against common right and reason," and their names are mentioned with gratitude in the history of jurisprudence. There are other instances of men holding the balance and the sword, whose names are gathered into a volume as "atrocious judges." If our judges, cruelly interpreting the Constitution in favor of Slavery, do not come into the latter class, they can claim no place among those others who have stood for justice, like the rock on which the sea breaks in idle spray. Vainly do you attempt to frame injustice into a law, or to sanctify it by any judgment of court. From Cicero we learn, that, "if commands of the people, if decrees of princes, if *opinions of judges* were sufficient to constitute right, then were it right to commit highway robbery, right to commit adultery, right to set up forged wills."[1] And Augustine tells us, with saintly authority, that what is unjust cannot be law.[2] Every law and every judgment of court, to be binding, must have at its back the everlasting, irrepealable law of God. Doubtless the model decision of the American bench, destined to be quoted hereafter with most honor, because the boldest in its conformity with great principles of humanity and social order, was that of the Vermont judge who re-

[1] De Legibus, Lib. I. c. 16.

[2] "Ubi justitia vera non est, nec jus potest esse." — *De Civitate Dei*, Lib. XIX. c. 21, § 1.

fused to surrender a fugitive slave *until his pretended master could show a title-deed from the Almighty.*

But courts have no longer occasion for such boldness. They need not step outside the Constitution. It is only needed that they should follow just principles in its interpretation. Let them be guided by a teacher like Edmund Burke, who spoke as follows:—

"*Men cannot covenant themselves out of their rights and their duties;* nor by any other means can arbitrary power be conveyed to any man. *Those who give to others such rights perform acts that are void as they are given.* . . . . Those who give and those who receive arbitrary power are alike criminal, and there is no man but is bound to resist it to the best of his power, wherever it shall show its face to the world. It is a crime to bear it, when it can be rationally shaken off."[1]

Or let them be guided by that other teacher, Lord Chatham, when he said:—

"With respect to the decisions of courts of justice, I am far from denying them their due weight and authority; yet, placing them in the most respectable view, I still consider them, not as law, but as an evidence of the law; and before they can arrive even at that degree of authority, it must appear that they are founded in and confirmed by reason, — that they are supported by precedents taken from good and moderate times, — that they do not contradict any positive law, — that they are submitted to without reluctance by the people, — that they are unquestioned by the legislature (which is equivalent to a tacit confirmation), — *and, what in my judgment is by far the most important, that they do not violate the spirit of the Constitution.*"[2]

[1] Speech in the Impeachment of Warren Hastings, February 16, 1788: Works (London, 1822), Vol. XIII. pp. 168, 169.

[2] Speech on the Address of Thanks, January 9, 1770: Hansard's Parliamentary History, Vol. XVI. col. 661.

Or let them go back to that early Spanish testimony against the Slave-Trade and Slavery, when De Soto, in lectures at Salamanca, thus spoke: —

"It is affirmed that the unhappy Ethiopians are by fraud or force carried away and sold as slaves. If this is true, neither those who have taken them, nor those who purchased them, nor those who hold them in bondage can ever have a quiet conscience till they emancipate them, *even if no compensation should be obtained.*" [1]

Or let them accept the unanswerable judgment of that acute moralist, the late Archbishop Whately, who in simple words shows the superior title of the slave: —

"A slave cannot fairly be called a thief for taking anything from his master, or for stealing his own liberty. He may be considered as in an enemy's country, in the midst of those who recognize no rights of his as against them, and who therefore have no rights as against him." [2]

If courts were thus inspired, it is easy to see that Slavery would disappear under righteous judgment.

2. Unhappily, courts will not perform the duty of the hour, and we turn elsewhere. Appeal must be made to Congress; and here, as has been fully developed, the powers are ample, unless in their interpretation you surrender in advance to Slavery. By a sin-

[1] De Soto, De Justitia et Jure, Lib. IV. Quæst. 2, Art. 2. Mackintosh, quoting these words, declares, with proper exultation, that "Philosophy and Religion appear by the hand of their faithful minister to have thus smitten the monsters in their earliest infancy." — *Dissertation on the Progress of Ethical Philosophy*, Sec. III.: Miscellaneous Works (London, 1851), p. 24.

[2] Paley's Moral Philosophy, with Annotations by Richard Whately (London, 1859): Annot., Book III. Part ii. ch. 3, *Slavery*, p. 178.

gle brief statute, Congress may sweep Slavery out of existence. Patrick Henry saw and declared, that, under the influence of a growing detestation of Slavery and the increasing "urbanity" of the people, this must be expected, while all the capacious war powers proclaim trumpet-tongued that it can be done constitutionally, and the peace powers echo back the war powers.

Here we encounter again the "execrable" pretension of property in man, with the attendant claim of "just compensation" for the renunciation of Heaven-defying wrongs. But this is no more incident to abolition by Act of Congress than by Amendment of the Constitution; so that, "if just compensation" can be discarded in one case, it can be in the other. But the votes on the latter proposition already taken in the Senate testify that it is discarded. Sir, let the "execrable" pretension never again be named, except for condemnation, no matter how or when it appears, or what form it takes. Let the "idea," originally branded as so "wrong" that it could not find place in the Constitution, never find place in our debates.

Even if Congress be not prepared for that single decisive measure promptly ending this whole question and striking Slavery to death, there are other measures by which the end may be hastened. The towering Upas may be girdled, even if not felled at once to earth. Already, by Acts of Congress, Slavery is abolished in the national capital and in the national territories. This is not enough.

The Fugitive Slave Bill, conceived in iniquity, and imposed upon the North as a badge of subjugation, may be repealed.

The coastwise Slave-Trade may be deprived of all support in the statute-book.

The traffic in human beings, as an article of "commerce among the States," may be extirpated.

And, above all, that odious rule of evidence, so injurious to justice and discreditable to the country, excluding the testimony of colored persons, may be abolished, at least in national courts.

And there is one other thing to be done. The enlistment of colored persons must be encouraged by legislation in every possible form; for enlistment is emancipation. That contract whereby the soldier-slave promises service at hazard of life, like the contract of marriage, fixes the equality of the parties, which Congress, for the national defence, and the national character also, will sacredly maintain.

All these things at least may be done, and, when they are done, Heaven and Earth will be glad, for they will have assurance that all will be done.

3. Nor will even these suffice. The people must be summoned to confirm the whole work. It is for them to put the capstone upon the sublime structure. An Amendment of the Constitution may do what courts and Congress decline to do, or, even should they act, it may cover their action with its panoply. Such an Amendment will give completeness and permanence to Emancipation, while bringing the Constitution into avowed harmony with the Declaration of Independence. Happy day, long wished for, destined to gladden those beatified spirits who have labored on earth to this end, but died without the sight!

And yet I would not indiscreetly take counsel of our

hopes. From the nature of the case, such an Amendment cannot be consummated at once. Time must intervene, with opportunities of opposition. It can pass Congress only by a vote of two thirds in both branches; and then it must be adopted by the Legislatures of three fourths of the States. Even under most favorable circumstances, it is impossible to say when it can become part of the Constitution. Too tardily, I fear, for all the good that is sought. Therefore I am not content with this measure alone. It postpones till to-morrow what ought to be done to-day; and I much fear that it will be made the apology for indifference to other efforts of direct practical value, — as if it were pardonable to neglect for a day the duties we owe to Human Rights.

> "To-morrow, and to-morrow, and to-morrow
> Creeps in this petty pace from day to day,
> To the last syllable of recorded time;
> And all our yesterdays have lighted fools
> The way to dusty death."

When will rise that to-morrow's sun, to witness that other sun filling the land with the light of Freedom?

For myself, let me confess, that, in presence of the mighty events now thronging, I feel how insignificant is any individual, whether citizen or Senator; and yet, humbly longing to do my part, I would not put off till to-morrow what ought to be done to-day, — especially can I not consent to this great postponement. Our fellow-men are in bonds: they must be relieved. Most beautiful that ancient story, where the philosopher, while on a mission to a great king for the release of captives, being invited to sup, replied in the famous words of Ulysses, "O Circe! what man of a right mind could let himself touch meat or drink before he had ransomed his companions and beheld them with his

eyes?" The philosopher did not speak in vain. The captives were set free at once.[1]

Beyond my general desire to see an act of universal emancipation, at once and forever settling this great question, so that it may no longer be the occasion of strife between us, there are two other objects ever present to my mind as a practical legislator: first, to strike at Slavery wherever I can hit it; and, secondly, to clear the statute-book of all existing supports of Slavery, so that this great wrong may find nothing there to which it can cling for life. Less than this, at the present moment, when Slavery is still menacing, would be abandonment of duty.

So long as a single slave continues anywhere beneath the flag of the Republic, I am unwilling to rest. Too well I know the vitality of Slavery with its infinite capacity of propagation, and how little Slavery it takes to make a Slave State with all the cruel pretensions of Slavery. The down of a single thistle is full of all possible thistles, and a single fish is said to contain many millions of eggs, so that the whole sea may be stocked from its womb.

The modern founder of political science, Machiavelli, writer as well as statesman, in his most instructive work, the Discourses on Livy, has a chapter entitled, "For a Republic to have long life, it is necessary to bring it back often to its origin":[2] where he shows how the native virtue in which a Republic was founded becomes so far corrupted that in process of time the body-politic is destroyed, — as in the case of the natural body, where,

[1] Plutarch's Lives, tr. Clough, Vol. IV. p. 565, Appendix. Diogenes Laertius. De Clarorum Philosophorum Vitis, etc., Lib. IV. c. 2, *Xenocrates*.

[2] Discorsi sopra la prima Deca di T. Livio, Lib. III. cap. 1.

according to the doctors of medicine, something is daily added, from time to time requiring cure. The remarkable publicist teaches under this head that Republics are brought back to their origin, and to the principles in which they were founded, by pressure from without, where prudence fails within; and he affirms that the destruction of Rome by the Gauls was necessary, in order that the Republic might have a new birth, with new life and new virtue, — all of which ensued, when the barbarians were driven back. If the illustration is fanciful, there is wisdom in the counsel; and now the time has come for its application. The Gauls are upon us, not from a distance, but domestic Gauls, flinging their swords, like Brennus, into the scales; and we, too, may profit by the occasion to secure for the Republic a new birth, with new life and new virtue. Happily, the way is easy; for there is no doubt of its baptismal vows, or the declared sentiments of its origin. There is the Declaration of Independence: let its solemn promises be redeemed. There is the Constitution: let it speak according to the promises of the Declaration. Let it speak, and the last act of the great American tragedy will be ended, while the stage is piled with corpses. From its early beginning in the hold of the Dutch ship on its way to Jamestown, as the Pilgrims in the Mayflower were on their way to Plymouth, down to this bloody Rebellion, Slavery has been a prolonged tragedy. History and Art will hereafter portray the scenes. Nor can its death be otherwise than an epoch, not only for our own country, but for mankind. Slavery in its distant origin was the substitute for death. The slave was allowed to live, but without the rights of man. Instead of death in the grave with its insensibility and decay, there was death

in life with constant degradation and suffering. Hence in all ages the awakened sympathies of the good and humane, — heard sometimes in sorrow for the unhappy fate of an individual, and then in appeal for a race.

How truly affecting are the words of Homer, depicting the wife of Hector toiling as bondwoman at the looms of her Grecian master, — or those other undying words which exhibit man in Slavery as shorn of half his worth! The story of Joseph sold by his brothers has been repeated in every form, touching innumerable hearts. Borrowed from the Bible, it figured in the moralities of the Middle Ages and in the later theatre of France. How genius triumphed over Slavery is part of this testimony. Æsop, the fabulist, — one of the world's greatest teachers, if not lawgivers, — was a slave; so also was Phædrus, the Roman fabulist, whose lessons are commended by purity and elegance; and so, too, was Alcman, the lyric, who shed upon Sparta the grace of poesy. To these add Epictetus, sublime in morals, — and Terence, incomparable in comedy, who gave to the world that immortal verse, which excited the applause of the Roman theatre, "I am a man, and nothing which concerns mankind is foreign to me." Nor should it be forgotten that the life of Plato was checkered by Slavery.

In later days the sympathy is more for a race than for individuals. Unhappily, the ban of color has become a certificate of Slavery, and a large portion of the human family, whose offence was a skin darkened by the hand of God, has been degraded to the condition of chattels. The sympathies once awakened only for illustrious gifts are now bestowed upon suffering humanity, marking an advance in civilization.

To be a man is a sufficient title-deed for the rights of man, which we seek to establish. But their triumph among us will be the certain herald of triumph everywhere. In other places Slavery may linger yet a little longer; but its death here will make its continued existence impossible wherever civilization prevails.

Mr. President, the immediate question before us is on the proposition to prohibit Slavery in our country by Constitutional Amendment; and here I hope to be indulged with regard to the form it should take. A new text of the Constitution cannot be considered too carefully even in this respect, especially when it is nothing less than a new article of Freedom. For a moment we are performing something of that duty which belongs to the *conditores imperiorum*, placed foremost by Lord Bacon in "the degrees of sovereign honor,"[1] and "words" become "things." From the magnitude of the task we may naturally borrow circumspection, and I approach this part of the question with suggestion rather than argument.

Let me say frankly that I should prefer a form of expression different from that having the favor of the Committee. They have selected what was intended for the old Jeffersonian Ordinance, sacred in our history, although, let me add, they have not imitated it closely. But I must be pardoned, if I venture to doubt the expediency of perpetuating in the Constitution language which, if it have any signification, seems to imply that "Slavery or involuntary servitude" may be provided for "the punishment of crime." Instances anterior

[1] Essays: Of Honor and Reputation.

to the Constitution show the origin of this exception. In the absence of penitentiaries, Slavery was a punishment adjudged by courts. According to early Colonial records in Massachusetts, one William Andrews "was censured to be severely whipped and delivered up as a slave to whom the Court shall appoint."[1] But it cannot be intended to sanction such judgment now. There can be no reason why Slavery should not be forbidden positively and without exception, especially as "imprisonment" cannot be confounded with this "peculiar" wrong. If my desires could prevail, I would put aside the Ordinance, and find another form.

I know nothing better than this: —

"All persons are equal before the law, so that no person can hold another as a slave: and the Congress shall have the power to make all laws necessary and proper to carry this declaration into effect everywhere within the United States and the jurisdiction thereof."

By the latter clause the declaration is plainly applicable to the States, while the earlier words assert the equality of all persons before the law, — a fruitful principle, assuring to all the same rights. *Inter pares non est potestas*, "Among equals there is no superiority," is a received maxim of law, expressing a natural truth. Therefore, where all are equal, there can be no Slavery; so that, in declaring equality before the law, you make Slavery, alike with superiority, impossible. This language, though unknown to the Common Law and new in our country, has a fixed place in modern constitutional history. To understand how it has reached

[1] Records of the Governor and Company of the Massachusetts Bay, December 4, 1638, Vol. I. p. 246. Palfrey, History of New England, Vol. I. p. 553.

its present authority we must repair for a moment to France, so rich in experience and in genius.

Bills of Rights in England were moderate in terms, compared with our Declaration of Independence, and with the Declarations of Rights first announced by France in the throes of terrible revolution, and since recognized among the permanent triumphs of that prodigious outbreak. Until this period there had been no written Constitution in France, though since there have been many in succession. The earliest, in September, 1791, was preceded by a Declaration of Rights, proposed by Lafayette, which, after setting forth that "ignorance, forgetfulness, or contempt of the rights of man are the sole causes of public evils and of the corruption of Governments," undertakes to announce what it calls "the natural rights of man, inalienable and sacred"; and this is done —

"To the end that this Declaration, being constantly present to all the members of the social body, may incessantly recall to them their rights and their duties; to the end that the acts of the legislative power, and those of the executive power, being every moment capable of comparison with the object of every political institution, may be more respected by them; to the end that the claims of the citizens, being henceforth founded on simple and incontestable principles, may always turn to the maintenance of the Constitution and to the happiness of all."

This too elaborate, but instructive preamble, is followed by an article with a generality of expression not unlike that of our own Declaration: —

"ARTICLE I. Men are born and continue free and *equal in rights.*"

In the sixth article of the Declaration this is explained by declaring that the law "ought to be the same for all, whether it protect, whether it punish," and then it speaks of "all citizens being *equal in its eyes.*" [1]

In June, 1793, another Constitution was adopted, which, after a brief preamble, opens with these articles: —

"ARTICLE I. The object of society is the common happiness. Government is instituted to guaranty to man the enjoyment of his natural and imprescriptible rights.

"ARTICLE II. These rights are equality, liberty, security, property.

"ARTICLE III. *All men are equal* by nature and *before the law.*" [2]

Here the new statement begins to appear. Men are equal by nature and before the law.

"Equal before the law." This term, which, by its essential accuracy and self-limitation, excludes all uncertainty, exaggeration, or vagueness, was already known in the literature of France. Voltaire, whose wonderful genius was so peculiarly French, with that constant clearness which is the boast of the French language, had used it in one of his philosophical poems, where political truth is commended in the manner of Pope. The first of these was in 1734, on "Equality of Conditions," where he says, "Mortals are equal; their mask is different"; and then, "To have the same rights to hap-

[1] Collection des Constitutions, Chartes et Lois Fondamentales des Peuples de l'Europe et des deux Amériques, par MM. P. A. Dufau, J. B. Duvergier, et J. Guadet, (Paris, 1823,) Tom. I. pp. 97, 98.

[2] Ibid., p. 135.

piness, this is for us the perfect and only equality";[1] thus, like our Declaration of Independence, placing "the pursuit of happiness" among natural rights. This assertion of equal rights was defined in the poem on "The Law of Nature," addressed to Frederick, King of Prussia, and written in 1752, where he says, "*The law* in every State ought to be universal; *mortals*, whoever they may be, *are equal before it.*" But I cite the precise words:—

> "*La loi* dans tout État doit être universelle:
> Les mortels, quels qu'ils soient, *sont égaux devant elle.*"[2]

This happy statement naturally passed from the poem to the Constitution.

It was much to declare equality; it was more still to do it with accuracy of form defying assault. This conquest of the Revolution assumed its most precise enunciation on the restoration of the Bourbons, when it appeared as the first article in the Constitutional Charter of Louis the Eighteenth, promulgated in 1814.

"ARTICLE I. *Frenchmen are equal before the law*, whatever may otherwise be their titles and their ranks."[3]

And it was repeated by Napoleon, April 22, 1815, on his return from Elba.[4]

[1] "Les mortels sont égaux; leur masque est différent.
. . . .
Avoir les mêmes droits à la félicité.
C'est pour nous la parfaite et seule égalité."
Discours en Vers sur l'Homme; Discours I., *De l'Égalité des Conditions*: (Œuvres (Paris, 1833), Tom. XII. pp. 45, 47.

[2] Poëme sur la Loi Naturelle, 4me Partie: Ibid., p. 176.

[3] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. I. p. 256.

[4] Ibid., p. 247.

At the installation of Louis Philippe as king, in August, 1830, with Lafayette by his side, the same declaration was placed at the head of the Constitutional Charter.[1]

Meanwhile this expression passed from France into the Constitutions of other countries: of Holland, in 1801, where the declaration was, "All members of society are equal before the law, without distinction of rank or birth";[2] of the Grand Duchy of Warsaw, created by Napoleon in 1807, where we meet these terms: "Slavery is abolished; all citizens are equal before the law";[3] of the Canton of Zug, in Switzerland, in 1814, where, among "General Principles," is the article, "All the citizens of the Canton are equal before the law, and there are no subjects in the Canton of Zug";[4] of Bavaria, in 1818, where "equality of the rights of the citizens before the law" is enumerated in the preamble among "the principal features of the Constitution";[5] of Bolivia, in South America, where in 1825 we meet the words, "All citizens are equal before the law";[6] of Portugal, in 1826, where it is declared, "The law is equal for all, whether it protects, whether it punishes";[7] of Brazil, where in the same year was a similar declaration;[8] and then of Greece, not only in the Provisional Constitution of 1822, but in the permanent Constitution of 1827, when the Greek nation "proclaims before God and before man its political existence and its independence," and then among its fundamental principles declares, "All Greeks are equal before the law."[9]

[1] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Supplément, p. 212.
[2] Ibid., Tom. III. p. 122.
[3] Ibid., Tom. IV. p. 73.
[4] Ibid., Tom. II. p. 511.
[5] Ibid., Tom. I. p. 232.
[6] Ibid., Supplément, p. 188.
[7] Ibid., p. 41.
[8] Ibid., p. 155.
[9] Ibid., p. 74.

The French Revolution of 1830 quickened this statement anew. Belgium adopted it in 1831,[1] and even Austria in 1849; the latter power as follows: "All subjects are equal before the law, and judged according to the same fundamental rights";[2] and Sardinia, in 1848, as follows: "All natives of the kingdom, whatever their titles or their rank, are equal before the law."[3] The same words reappear in the Fundamental Statute of Italy, in 1861, when that classical land became a nation.[4]

Doubtless the extensive adoption of this formula testifies to its value in expressing an important principle, being nothing less than the primal truth declared by our fathers. All will confess its comparative precision. The sophistries of Calhoun, founded on the obvious inequalities of body and mind, are all overthrown by this simple statement, which, though borrowed latterly from France, is older than French history. I have had occasion before to remind the curious student that the ancient Greek of Herodotus supplies a single word for this phrase, when it is said that "the Government of the many has the most beautiful name of *ἰσονομία*," or *equality before the law*.[5] The father of history was right. The name is most beautiful. But he did not see all its beauty; nor did the three Persian satraps, whose dialogue he reports,[6] know how great a truth was re-

[1] Annuaire Historique Universel, 1831, Appendice, Documents Historiques, p. 155.

[2] Ibid., 1849, Appendice, Documents Historiques, p. 134.

[3] British and Foreign State Papers, 1847-48, Vol. XXXVI. p. 890.

[4] Art. XXIV. Statuto Fondamentale del Regno: Annuario Diplomatico del Regno d' Italia.

[5] History, Book III. c. 80. See, *ante*, Vol. II. p. 339.

[6] Hallam says of this scene, which occurred after the murder of Smerdis the Magian, that it is "conceived in the spirit of Corneille." — *Middle Ages* (London, 1853), Vol. II. p. 344, note, Ch. VIII. Part 2.

vealed. Not till after generations and ages had passed was *equality before the law* authoritatively declared; and now, while invoking it as a rule, we repair to that bountiful Greek tongue, which, at that early day, by a single word, anticipated our modern exigency. Such a word, originally adopted in our Declaration of Independence, would have superseded criticism.

Enough has been said to explain the origin of a term which has played an important part. Though traced to distant antiquity, and now adopted in various countries, it derives its modern authority from France, where it is the "well-ripened fruit" of unprecedented experience in the discussion of great problems in political science. Naturally, it does not come from England; for the idea finds little favor in that hierarchical kingdom. In France Equality prevails more than Liberty: in England Liberty more than Equality. Here among us both should find a home; and such a declaration as I now propose, embodying *Liberty and Equality*, will keep the double idea perpetual in the public mind and conscience, "to warn, to comfort, and command." The denial of Liberty in the Rebel States begins with the denial of Equality; so that our work is not completely done without the assertion of both principles.

In making Equality the fundamental principle, underlying Liberty itself, I follow reason and authority. Clearly, where all are equal, there can be no Slavery. Equality makes Slavery impossible, while it broadens Liberty into that community of right which is the essence of Republican Government. A remarkable French writer, La Boëtie, whose short life was brightened by the friendship of Montaigne, well exhibits the

dependence of Liberty upon Equality. In his little work, "Voluntary Servitude," which inspires astonishment in all who read it, while vindicating and exalting Liberty as derived from Nature, and setting forth how "this good mother" has given to us all the whole earth for a home, has lodged us all in the same house, has fashioned us all according to the same pattern, so that each can see and recognize one in another, and then, alluding to the gift of voice and speech for our better mutual acquaintance and fraternity, also to the means by which Nature ties and binds so strongly the knot of our alliance and society, also to the manifestation in all things that she did not wish so much to make us all united as all one, the precocious philosopher declares: "There can be no doubt that we are all naturally free, *since we are all companions,* and it cannot fall into any human head that Nature has put anybody in slavery, *having put us all in company.*"[1] Here is exhibited that controlling Equality which has prevailed in France.

A recent English publicist and professor exhibits also the predominance of this principle: I refer to Mr. Maine, who, in his work on "Ancient Law," after tracing it to the jurisconsults of the Antonine era, and asserting that it "is one of a large number of legal propositions which in progress of time have become political," attests the influence of France, which, according to him, is seen in our own Declaration of Independence, where what he calls "the specially French assumption," that all men are born equal, is joined with what he calls "the assumption more familiar to Englishmen," that all men

[1] Discours de la Servitude Volontaire: Œuvres, ed. Feugère, (Paris, 1846,) pp. 26, 27.

are born free; and he adds, that, "of all the 'principles' of 1789,' it is the one which has been least strenuously assailed, which has most thoroughly leavened modern opinion, and which promises to modify most deeply the constitution of societies and the politics of states."[1] And now I venture to suggest that this guiding principle be recognized by us in words commended by usage and intrinsic character.

Should the Senate not incline to this form, there is still another I would suggest: —

"Slavery shall not exist anywhere within the United States or the jurisdiction thereof; and the Congress shall have power to make all laws necessary and proper to carry this prohibition into effect."

This is simple, and avoids all language open to question. The word "Slavery" is explicit, and describes precisely what you propose to blast. There is no doubt with regard to its signification. It cannot be confounded with "the punishment of crime"; for imprisonment is not Slavery; nor can any punishment take the form of a wrong which stands by itself, peculiar, terrible, outrageous. Therefore nothing about punishment should find place in the rule we now ordain. Beyond this I would avoid technicality, which is out of place in such a text; and here I am encouraged by other examples. An early Constitution of France prohibited Slavery in every form, when it said: "Every man can engage his

[1] Ancient Law: its Connection with the Early History of Society, and its Relation to Modern Ideas, by Henry Sumner Maine, (London, 1861,) pp. 92–96. In harmony with this English writer is M. Émile de Girardin, the French journalist and publicist, who, in a work which appeared in 1872, says, "A single line which follows resumes all the Revolution of 1789"; and he then quotes in capitals, "Frenchmen are equal before the law."

time and his services, but he cannot sell himself, nor be sold; his person is not alienable property."[1] That of the Greek nation was equally thorough: "It is not permitted in Greece to sell or to buy men; every slave, whatever may be his nation or religion, is free from the time he puts foot on Greek territory."[2] Nothing can be simpler than this prohibition in the Bavarian Constitution: "Servitude is everywhere suppressed";[3] or than this in the Constitution of Wurtemberg: "Serfdom is forever abolished";[4] or than this in the Constitution of the French Republic in November, 1848: "Slavery cannot exist upon any French soil."[5] Nor can anything be more simple and thorough than these words from Hayti: "Slaves cannot exist on the territory of the Republic. Slavery there is forever abolished."[6] Naturally a Republic of enfranchised slaves made this the first article of its Constitution, while sense as well as instinct supplied the form. And, Sir, in all these historic instances you will remark that there is nothing technical.

If the Senate is determined to follow the Jeffersonian Ordinance, then I prefer that it should be the Ordinance actually, and not as reported by the Committee. And I would complete the work by expelling from the Constitution all those words so often misconstrued, perverted, and tortured to a false support of Slavery.

[1] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. I. p. 150.

[2] Ibid., Supplément, p. 75.

[3] Ibid., Tom. II. p. 228.

[4] Ibid., p. 279.

[5] Annuaire Historique Universel, 1848, Appendice, Documents Historiques, p. 41.

[6] Collection des Constitutions, etc., par Dufau, Duvergier, et Guadet, Tom. V. p. 239.

But while desirous of seeing the great rule of Freedom we are about to ordain embodied in a text which shall be like the precious casket to the more precious treasure, yet I confess that I feel humbled by my own endeavors. (And whatever the judgment of the Senate, I am consoled by the thought that the most homely text containing such a rule will be more beautiful far than any word of poet or orator, and will endure to be read with gratitude, when the lofty dome of this Capitol, with the statue of Liberty which crowns it, has crumbled to earth.)

CASTE AND PREJUDICE OF COLOR.

LETTER TO THE YOUNG MEN'S ASSOCIATION OF ALBANY, APRIL 16, 1864.

THE managers of the Young Men's Association of Albany, after excluding from their lecture-room all persons not of an approved color, invited Mr. Sumner to speak on Lafayette. He returned the following answer.

SENATE CHAMBER, April 16, 1864.

SIR,— You invite me to deliver an address on Lafayette before the Young Men's Association of Albany. In view of a recent incident in the history of your Association, I am astonished at the request.

I cannot consent to speak of Lafayette, who was not ashamed to fight beside a black soldier, to an audience too delicate to sit beside a black citizen. I cannot speak of Lafayette, who was a friend of universal liberty, under the auspices of a society which makes itself the champion of caste and vulgar prejudice.

I have the honor to be, Sir, your obedient servant,

CHARLES SUMNER.

C. W. DAVIS, Esq.,
Cor. Sec., &c., Albany.

FINAL REPEAL OF ALL FUGITIVE SLAVE ACTS.

SPEECH IN THE SENATE, ON A BILL FOR THIS PURPOSE, APRIL 19, 1864.

DECEMBER 10, 1863, Mr. Sumner gave notice of his intention to introduce a bill to repeal all acts for the rendition of fugitive slaves.

February 8, 1864, in pursuance of previous notice, Mr. Sumner asked and obtained leave to introduce the bill above mentioned, which was read twice by its title, and referred to the Select Committee on Slavery and Freedmen.

February 29th, Mr. Sumner reported from the Committee a bill with an accompanying report, of which ten thousand extra copies were ordered to be printed.[1] There was a minority report by Mr. Buckalew, of Pennsylvania, which was also printed in equal number.

The bill was in the following terms: —

"A Bill to repeal all acts for the rendition of fugitives from service or labor.

"*Be it enacted by the Senate and House of Representatives in Congress assembled*, That all Acts of Congress, or parts of Acts, providing for the rendition of fugitives from service or labor, be and the same are hereby repealed."

March 7th, Mr. Sumner asked the Senate to take up the bill, with a view to make it the special order for a future day. This motion was agreed to, and then, on his further motion, it was made the special order for March 9th. The disposition to delay showed itself the next day, when Mr. Davis, of Kentucky, proposed to make another question a special order for the same time. Mr. Sumner reminded him that the repeal of the Fugitive Slave Act was a special order at that time. Mr. Davis replied, "I suppose that can wait a little." Mr. Sumner: "I do not wish to have that wait at all. It is a disgrace to the country and the statute-book which we want to get rid of." When it was

[1] *Ante*, p. 118.

called up at the appointed time, Mr. Davis expressed a desire for postponement, and then, on motion of Mr. Sumner, at the suggestion of Mr. Hendricks, of Indiana, it was made the special order for March 16th, at one o'clock. Owing to the pendency of an Appropriation Bill, as unfinished business, on this day, it lost its place.

March 18th, Mr. Sumner, finding that Mr. Davis was not ready to proceed with his remarks, moved to make the bill the special order for March 22d, at one o'clock. This motion was lost, — Yeas 19, Nays 20. Mr. Sumner then said: "I now deem it my duty to give notice that I shall take every proper occasion to call the bill up, and press its consideration upon the Senate."

Meanwhile the attention of the Senate was occupied by other things, especially by the Constitutional Amendment abolishing Slavery.

April 18th, Mr. Sumner appealed to Mr. Fessenden, who had charge of the Legislative Appropriation Bill, then under consideration, to yield, so that the other bill could be considered. At this time he said: "The Senator says it will make a great deal of debate. I doubt if it will. I think the topic has already been amply discussed in connection with other matters. I have several times yielded to amiable pressure, reluctantly, always against my own sense of duty, but from desire to oblige associates in this body. One Appropriation Bill has been interposed, on the motion of the Senator from Maine, which has taken several days. Now, I submit, the time has come when this bill ought to be considered. Let us give one day to it, at least. I say this with reluctance, because I see that the Senator has come prepared to go on with his bill, and I respect so much the order of business and the preparations of Senators to do their part, that I do not interfere, except most reluctantly. I am for the Appropriation Bill. The Senator knows that I am ever in my seat to sustain all his motions on Appropriation Bills; but this bill is committed to my care, and I therefore ask him to allow it to be proceeded with to-day. There is in the Appropriation Bill an innate vitality; it cannot lose by delay; the public interests cannot suffer; but I do not doubt that all these, and the good name of the country, suffer by every day's delay in the repeal of the Fugitive Slave Act." Mr. Fessenden said that Mr. Sumner was "at liberty, if he chose, to move that that bill be taken up and this be laid aside," and that he should ask the judgment of the Senate.

April 19th, Mr. Sumner moved that the Senate proceed with the bill, and this motion was agreed to, — Yeas 26, Nays 10. The Senate, as in Committee of the Whole, considered the bill, and it was reported to the Senate without amendment, ordered to be engrossed for a third read-

ing, and was read the third time, without a division, and without a word of debate. It only remained to put the question on its final passage, when Mr. Foster, of Connecticut, remarked that he was "not prepared to see this bill passed just now"; he had "supposed the Senator from Massachusetts was to address the Senate upon it." Mr. Sumner had "not the least desire to address the Senate"; he did "not wish to say a word upon it." Mr. Foster "did not apprehend that the bill was to be put on its passage at the present time, and expected to say something upon it." Mr. Pomeroy, of Kansas, remarked, "We may as well pass the bill now." The Chair put the question, and the yeas and nays were ordered, when Mr. Hendricks spoke against the bill. He said: "It may be that our fathers erred in the agreement among themselves that a fugitive slave should be returned; it may be that it was a mistake on their part; but while their agreement stands, and while my oath is upon my conscience to respect that agreement, I cannot vote for a bill like this." The debate was opened.

Mr. Sherman, of Ohio, had "some doubt about the expediency of now repealing the law of 1793." Mr. Sumner said that the Committee "felt that we had better make a clean thing, purify the country, and lift it before foreign nations, which could be only by washing our hands of Slavery." Mr. Sherman was "not guided exactly by the motives of the honorable Senator from Massachusetts"; he would "give to the people of the Southern States, the few that are left who have the right to enforce the Constitution against us, their constitutional rights fully and fairly." According to him, "the law of 1793 was framed by the men who framed the Constitution," and "has been declared to be valid and constitutional by every tribunal that has acted upon it." Mr. Sumner replied, that "it was declared to be unconstitutional in certain particulars by the Supreme Court of the United States in the Prigg case, and it is among the records in the life of Judge Story, who gave the opinion in that case, that the fatal objection of a failure to give a trial by jury in a case of human freedom was never argued before the Court, and that he personally considered it an open question." Mr. Sherman preferred "not to repeal the law of 1793, about the constitutionality of which he had little doubt." Mr. Sumner replied, "Then the Senator has little doubt that under the Constitution a human being may be given over to Slavery without a trial by jury." Mr. Sherman "would not go into the discussion of that question." Finding that the bill had passed the stage when it could be amended, he moved to reconsider the vote ordering it to be engrossed and read a third time, which was done, when he moved to add these words: —

"Except the Act approved February 12, 1793, entitled 'An Act respecting fugitives from justice and persons escaping from the service of their masters.'"

Mr. Henderson, of Missouri, proposed to repeal the Act of 1850, leaving the Act of 1793 in force. Mr. Sherman thought "we had better repeal all the laws on the subject except the Act of 1793." Mr. Reverdy Johnson said: "The Constitution as it is now, according to my interpretation of it, not only authorized the passage of the Act of 1793 and the passage of the Act of 1850, but made it the duty of Congress to pass some law of that description." Mr. Sumner followed.

MR. PRESIDENT,—I shall not be carried into extended debate, but shall content myself with replying directly to what has been said on the other side.

There is, first, the Senator from Ohio [Mr. SHERMAN], who intervened to arrest the generous purpose of the Senate, as it was about to vote, by a motion to preserve the old Act of 1793. Strange that now, while we are in deadly conflict with Slavery, it should be proposed to keep alive an ancient support of Slavery. For the Senator gravely insists, and the Senator from Maryland [Mr. REVERDY JOHNSON] insists with him. But the Senator from Ohio does not seem aware of the character of the statute he would preserve. Let me remind him that by this enactment, towards which he is so tender, a fellow-man may be hurried before a magistrate and doomed to Slavery without trial by jury. Can this be constitutional? Will the Senator sanction such a thing?

Then the other Senator, who is so familiar with our jurisprudence, takes exception to the statement that Mr. Justice Story admitted that the constitutionality of the Act of 1793 had never been affirmed by the

Supreme Court. He thinks that this learned judge never made any such statement. But he is mistaken. Here is a volume containing the Life and Letters of Joseph Story, carefully prepared and published by his son. I turn to the passage.

"One prevailing opinion, which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case, and the argument that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth [seventh] article in the Amendments to the Constitution, having been suggested to my father, on his return from Washington, *he replied, that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one.*"[1]

Evidently, according to this authentic record by his son, the necessity of a trial by jury was not argued by counsel nor considered by the Court, while the judge for himself declared that he should consider it an "open" question; so that the constitutionality of the Act in this important respect has not been affirmed. But the Senate is now asked to affirm it. We are asked to vote that a fellow-man be handed over to Slavery without trial by jury. To me this proposition is hateful beyond the power of words to express.

But the Senator, not content with affirming the constitutionality of the Act of 1793, has plunged into a general discussion on the fugitive clause of the Con-

[1] Life and Letters of Joseph Story, edited by his Son, Vol. II. p. 396.

stitution. He insists laboriously that it was intended to cover fugitive slaves. When I reminded him that its authors might have intended it to cover fugitive slaves, without succeeding in their attempt, he still insists that it does cover fugitive slaves. Well, Sir, there I meet him point-blank. I insist, that, whatever the original intention of the framers of that clause, they did not leave it so as to cover fugitive slaves. It remains a question of construction, and the language employed is not applicable to fugitive slaves. It does not describe them, and cannot by any just tribunal be extended to embrace them. If the prepossessions of the Senator were more evenly balanced, I should not doubt his judgment on this point, which in the light of jurisprudence is so clear.

There is a rule of interpretation which the Senator will not call in question. Where any language is open to two constructions, one beneficent and the other odious, *that which is odious must be rejected.* I do not stop to adduce authorities. The rule is unquestionable, and the authorities are ample. But keep in mind the conclusion: that which is odious must be rejected. Now the Senator has already admitted that the language of the clause is applicable to apprentices. Very well. That is enough. In its application to apprentices, redemptioners, and the like, it is exhausted, so that it cannot be made to cover a slave without offending against the rule requiring us to adopt the construction least odious. And, Sir, if we go further and closely scan the clause, we find that the words employed are all applicable to a relation of *contract* or *debt*, and not to a relation founded on *force.* The clause is applicable to a "person," and not to a *thing,*

and this "person" is to be surrendered on claim of the person to whom his service or labor may be *due*. But, clearly, no labor or service can be *due* from slave to master. The whole pretension is an absurdity. And if you give to this word its legitimate application, you must restrict it to a case of *contract* or *debt*. In this reply I omit the argument founded on history, and the well-known opinions of leading minds in the Convention, confining myself to the text of the Constitution.

But the Senator dwells especially on the words "held to service or labor in one State *under the laws thereof*," and triumphantly declares that slaves were included under this language. Here again he is mistaken. Apprentices and redemptioners were held under "laws"; but I need not remind the Senator of the admission repeatedly made on this floor by Mr. Mason, author of the last Fugitive Slave Act, that there were no "laws" for Slavery in any Slave State, — at least, that none could be produced. Besides, as a jurist, the Senator surely will recollect the ancient truth, that injustice cannot be "law," but is always to be regarded as an "abuse" or a "violence," even though expressed in the form of "law." In presence of this principle, which has the sanction of as great a lawyer as St. Augustine, and in the face of the positive assertion of Mr. Mason, that no "law" for Slavery can be found in the Slave States, what becomes of the argument of the Senator? Sir, the case is clear. No ingenuity of honest effort can ever make the words cited by the Senator, or any other words in that much debated clause, sanction Slavery and the hunting of slaves. To proceed with his argument, the Senator must begin by setting aside those commanding rules of interpre-

tation which are binding on him as on myself. If, where words are susceptible of two significations, one beneficent and the other odious, the former only can be taken, then must the Senator restrict this clause to that signification which is not odious. And again, if every word is always to be construed so as most to favor Liberty, then must the Senator follow implicitly this rule. But these two rules make it impossible to torture the clause into any *odious* or *tyrannical* signification. They keep it clean and pure from Slavery.

Sir, one feels humbled by the necessity of this discussion, — that at this late day he should be called to vindicate the Constitution of his country against glosses and interpretations in the interest of Slavery. Pardon me, if, for a moment, leaving the two Senators who seek to foist Slavery into the Constitution, I turn to the question itself, not so much for argument as for statement. If I seem to repeat, it is because there are certain points which I desire to impress upon the Senate. To my mind nothing is clearer than that, according to unquestionable rules of interpretation, the clause of the Constitution, whatever the alleged intent of its authors, cannot be considered applicable to slaves. Such is Slavery, that, from the nature of the case, it cannot be sanctioned or legalized except by "positive" words. *It cannot stand on inference.* This rule, which no reasoning can shake, drove Lord Mansfield to his great judgment in Somerset's case. African Slavery had for two generations prevailed in England. Eminent lawyers and judges had pronounced it legal. Some of the brightest names in Westminster Hall had given to it the support of professional opinion and the seal of judicial decision. At last a person at that time unknown, Granville Sharp, struck

by the injustice of Slavery, devoted himself to consider the grounds on which its legality was recognized. He studied the laws of England, and all the various evidences of its Constitution. In the course of these studies he was gratified to find that there was no *positive* establishment of African Slavery in England, and, indeed, that the words "Slave" and "Slavery" were nowhere to be found in the British Constitution. He next applied himself to the powerful array of well-known rules of interpretation, requiring, in case of doubt or question, that the interpretation should be on the side of Liberty, and especially that any man was "impious" and "cruel" who did not favor Liberty. Impiety and cruelty are not light burdens for an honest conscience. The conclusion was irresistible, that Slavery could not exist in England.

But the unanswerable argument of Granville Sharp was rejected at first by the bar, who regarded it as an attempted innovation. The direct precedents and the weight of authority were the other way, and this with most lawyers is enough. Harvey said that no person above "forty" accepted his discovery of the circulation of the blood. And Granville Sharp found himself in the same predicament. But this good man was not disheartened. He knew well that there was no statute of limitations against principles, and, better still, that principles must finally prevail over precedents. Principles are immortal, and bloom with perpetual youth: precedents are mortal, and die from age, decrepitude, and decay. Against principles precedents may for a while prevail; but the time comes when that which is mortal must yield to that which is immortal. In this conviction he persevered, until at last lawyers were convinced, and then the court pronounced in his favor.

The judgment of Lord Mansfield constitutes a landmark of law, to be remembered proudly, when all his contributions to commercial law and general jurisprudence are forgotten. It was a contribution to the British Constitution and to human rights. Like every principle of Natural Law, it approves itself at once to the reason and conscience. And this authority I now invoke in the interpretation of the Fugitive Clause.

I have already said too much. The argument on both sides is presented in the two reports of the Committee, or rather in the report of the Committee and the "views of the minority." Senators, I doubt not, have already made up their minds, which no discussion can change. Of course, some may vote against the acts on one ground and some on another. The arguments are numerous. It is enough, if on any ground they vote to remove this shame from our statute-book.

I do not enter into details of the constitutional argument, whether Congress has power under the Constitution to legislate on this subject, or whether it may confide this great trust to a single magistrate without trial by jury. These are grave questions, worthy of debate, into which I am ready to enter, if the occasion requires. But I forbear. Often, in other times, I have discussed these questions in the Senate and before the people; but the time for discussion is passed. And permit me to confess my gladness in this day. I was chosen to the Senate for the first time immediately after the passage of the infamous Act of 1850. If at that election I received from the people of Massachusetts any special charge, it was to use my best endeavors to secure the repeal of this atrocity. I began the

work in the first session that I was here. God grant that I may end it to-day!

Mr. President, one word more. The suggestion is too often made that this measure is not practical. Not practical! It is the favorite phrase. But this depends upon what Senators consider practical.

If it be practical to relieve the people from an unconstitutional and oppressive statute, — if it be practical to take away a badge of subjugation imposed by slave-masters during a brutal supremacy, — if it be practical to secure the good name of the Republic, still suffering immeasurably from this outrage, — if it be practical, at this moment of our own severe trial, to substitute justice for oppression, and thus secure the favor of Providence, — and, finally, if it be practical to strike at Slavery wherever we can hit it, and to relieve ourselves of all responsibility for this terrible wrong, — then is this measure eminently practical. It is as practical as justice, as practical as humanity, as practical as duty, which cannot be postponed.

But, independently of its intrinsic justice, this measure is recommended by an expediency of the highest character. I blush to plead in this way, but the occasion must be my apology. Senators are not aware how much our country suffers in the judgment of civilized nations from that accursed statute, which now for more than ten years has been a byword and hissing among men. Genius in some of its rarest creations has made it known, literature and art in every form have lent themselves to expose it, while the unutterable atrocities it has sanctioned have been carefully gathered together and circulated abroad as

testimony against republican institutions. Since the outbreak of the Rebellion this statute has been constantly adduced by our enemies abroad, as showing that we are no better than Jefferson Davis and his slavemonger crew; for Slavery never shows itself worse than in the slave-hunter. Only within a few days there has appeared at New York, published for the fair, a photograph copy of a letter of the late Alexander von Humboldt, containing the following words: "I have the warmest attachment to your beautiful and liberal city, New York, but have earnestly and deeply regretted that Webster, whom I long respected, more than favored that *shameful* law which still persecuted colored men after they had regained by flight their natural, inborn liberty, of which they had been robbed by Christians." Humboldt was our friend, but he could not forbear characterizing this statute as "shameful." Be assured, Sir, it is a burden for the national cause abroad which it ought not to bear. For the sake of our cause, and that it may have new strength in the swelling sympathies of the civilized world, it should be repealed at once, without hesitation.

I confess, Sir, another motive. At this moment of severe trial, I wish my country to put itself right with that Supreme Power which holds in its hands the destinies of nations. It is as true in the life of nations as in the life of individuals, that, if you would have equity, you must do equity; but the great equity which we must do is found in justice to an oppressed race. It is vain that you complain of disaster to your arms, of colored soldiers and their brave officers cruelly treated at Fort Wagner, of colored soldiers and their brave officers massacred at Fort Pillow, if yourselves

continue to set the example of injustice. The story of the Israelites is revived, and plague after plague is sent, sounding forever the old commandment, "Let my people go." If the plagues sent already are not enough, another and yet another will visit us. There is one assurance of obedience which you can give. It is to expunge from your statute-book all support of Slavery. Be in earnest here, and you will be practical. Then, having done equity, you may fearlessly ask for equity.

I have already said more than I intended. It was my purpose to leave the Senate without a word of argument or persuasion. The case to my mind is too clear, and I thought the time had come for votes. And now, as I conclude, I forbear to press all constitutional objections, and present the whole question on a single ground. Slavery has struck at the national life. Let us strike back wherever we can smite the great offender, and above all let us purify the statute-book, so that there shall be nothing there out of which this terrible wrong can derive support. In the discharge of this duty, all Fugitive Acts should be repealed. The argument against one is the same against all.

The amendment of Mr. Sherman was adopted, — Yeas 24, Nays 17.

Mr. Saulsbury moved an amendment of two sections concerning arrests without due process of law, — Yeas 9, Nays 27. Mr. Conness, of California, then said: "I do not wish to cast a vote for this measure in its present shape. I had intended, before the debate closed, if it was debated, to say something on the subject. I do not design that now; and as the Senate have seen fit to amend the bill, I cannot vote for it. At present, therefore, I move that it lie on the table." Mr. Sumner hoped the Senator would "withdraw that motion." Mr. Conness: "For what reason?" Mr. Sumner: "For the reason that we get something by this bill." The motion to lay on the table was lost,—Yeas 9, Nays 31. The Democrats, and Mr. Conness, voted in the affirmative.

April 20th, the Senate proceeded with the bill, when Mr. Foster, of Connecticut, made an elaborate speech, especially vindicating the Act of 1793, in the course of which he was frequently interrupted by Mr. Sumner in answer to points of the argument. He was followed by Mr. Gratz Brown, of Missouri, who concluded by saying: "I cannot support this bill as it has been amended. I cannot support any bill that recognizes as right and proper any Fugitive Slave Act; and I shall therefore refuse to give it my sanction, if it comes to a vote upon the final passage in its present shape."

April 21st, Mr. Van Winkle, of West Virginia, seized the opportunity to speak at length on the question of the war. Mr. Howard, of Michigan, moved an amendment at the end of the bill: —

"But no person found in any Territory of the United States, or in the District of Columbia, shall be deemed to have been held to labor or service, or to be a slave; nor shall he or she be removed under said Act of 1793; and the fourth section of said Act is hereby repealed."

Mr. Doolittle, of Wisconsin, moved an executive session. Mr. Sumner suggested that it should be an hour later. Mr. Brown thought the bill could not be finished that evening. Mr. Fessenden did not like to interfere with this bill, but he must give notice, that, if the bill were not disposed of that afternoon, or by one o'clock the next day, he must then move to go on with the Army Appropriation Bill. Mr. Sumner hoped "we might go on for at least another hour." Mr. Conness "did not understand the anxiety of his honorable friend from Massachusetts in pressing this bill in its present condition." Mr. Pomeroy hoped Mr. Sumner would let the bill go over; there were half a dozen amendments to be proposed. Mr. Sumner replied: "Very well; if the friends of the measure request that it shall not be pressed to-day, I will not throw myself in their way." Accordingly, on the motion of Mr. Conness, it was postponed to April 27th, and made the special order at one o'clock; but it was then superseded by the unfinished business of the day preceding, being the National Currency. With the amendment fastened upon his bill, keeping alive the Act of 1793, Mr. Sumner was not encouraged to press it, and he waited the action of the House of Representatives.

June 6th, in the House of Representatives, Mr. Morris, of New York, reported from the Committee on the Judiciary a bill in the following terms.

"AN ACT to repeal the Fugitive Slave Act of eighteen hundred and fifty, and all Acts and Parts of Acts for the Rendition of Fugitive Slaves.

"*Be it enacted by the Senate and House of Representatives in Congress assembled*, That sections three and four of an Act entitled 'An Act respecting

fugitives from justice and persons escaping from the service of their masters,' passed February twelve, seventeen hundred and ninety-three, and an Act entitled 'An Act to amend, and supplementary to, the Act entitled "An Act respecting fugitives from justice and persons escaping from the service of their masters," passed February twelve, seventeen hundred and ninety-three,' passed September, eighteen hundred and fifty, be, and the same are, hereby repealed."

After some skirmishing, the bill was ordered to be engrossed and read a third time. It was then vehemently denounced, and a series of motions was made to delay or stave off its passage. At last Mr. Morris allowed its postponement to June 13th, on which day, after further denunciation, it passed the House, — Yeas 90, Nays 62.

June 15th, the House bill was laid before the Senate, when Mr. Sumner said: "I am instructed by the Committee on Slavery and Freedmen to move the immediate passage of that bill. The Senate understands it; the House of Representatives has acted on it; there is no need of debate; and I ask to have it voted on at once." Mr. Hale, of New Hampshire, objected, as he wanted the morning hour for morning business. Mr. Powell, of Kentucky, moved its reference to the Committee on the Judiciary. Mr. Sumner wished it referred to the Committee on Slavery and Freedmen. The Senate refused to order the reference to the Committee on the Judiciary, — Yeas 14, Nays 21. Then, on motion of Mr. Sumner, it was referred to the other Committee. Mr. Sumner, anticipating such a reference, had already obtained from the Committee authority to report it promptly, without amendment, which he did at once, and asked for immediate action. Objection being made, the bill was not considered at that time.

June 21st, Mr. Sumner moved that the Senate proceed with the House bill, which, after earnest debate, was ordered, — Yeas 25, Nays 17. The Senate then took a recess till evening, when other business was considered, including the question of opening the street cars.

June 22d, Mr. Sumner moved to proceed with the House bill. Mr. Hale, of New Hampshire, opposed the motion, as he desired the Senate to take up some naval bills. The motion was lost, — Yeas 14, Nays 22. In the evening session, Mr. Sumner moved again to proceed with the House bill. Mr. Chandler said: "I will spend to-night with great pleasure with the Senator from Massachusetts on his bill; but to-morrow I shall demand the day for the Committee on Commerce." Mr. Saulsbury moved to adjourn, saying, "Let us have one day without the nigger." The motion was lost, — Yeas 8, Nays 28. Mr. Reverdy Johnson wished to secure an opportunity for Mr. Davis to speak, and he

was now absent. Mr. Sumner replied: "The Senator from Kentucky has had ample notice. He knew that this bill would be moved as soon as I could get the floor." Mr. Johnson insisted, when Mr. Sumner said: "The public business cannot wait. Again and again has this measure been postponed in deference to the Senator from Kentucky." The motion to proceed with the bill was adopted, — Yeas 26, Nays 12. Mr. Lane, of Indiana, then moved to proceed with executive business. Mr. Powell said: "You cannot get a vote to-night." Mr. Sumner: "Let us try." Mr. McDougall: "It is not possible to take a vote to-night." Mr. Howard and Mr. Wade: "We can get it by morning." Mr. McDougall: "It cannot be done." The motion for an executive session was lost, — Yeas 15, Nays 22. Mr. Saulsbury then moved that the bill be indefinitely postponed, and the question resulted, Yeas 11, Nays 25. Mr. Lane again moved an executive session, which motion was lost, — Yeas 16, Nays 22. Mr. Powell then moved that the bill be postponed until the first Monday of December next. Pending this motion, Mr. Riddle, of Delaware, moved an adjournment, which was lost, — Yeas 12, Nays 22. In the course of these dilatory motions, Mr. Sherman remarked that he was willing to give Mr. Davis an opportunity to be heard, and then said: "If Senators propose to resort to these parliamentary tactics, these interminable propositions for delay, merely to defeat a vote upon a bill which the majority have a right to pass, I am perfectly willing now to go into a contest of physical endurance." At last the bill was reported to the Senate without amendment, with the understanding that Mr. Davis should be heard upon it the next day, when Mr. Powell withdrew his motion, and, after the consideration of executive business, the Senate adjourned.

June 23d, Mr. Davis addressed the Senate at length. Mr. Saulsbury moved to strike out all after the enacting clause and insert the words of the Constitution concerning fugitives from service, with the addition: "And Congress shall pass all necessary and proper laws for the rendition of all such persons who shall so as aforesaid escape." The motion was lost, — Yeas 9, Nays 29. Mr. Johnson moved to amend the bill so as to keep alive the Act of 1793, saying: "The amendment, as the Senate will see, makes this bill like the one that we passed after debate." This motion was also lost, — Yeas 17, Nays 22. So the Senate reversed its former decision on that question. The bill was then passed by the vote, Yeas 27, Nays 12, and was approved by the President June 28th.

Here was the end of all Fugitive Slave Acts, and another blow at Slavery.

THE NATIONAL BANKS AND THE CURRENCY.

SPEECHES IN THE SENATE, ON AMENDMENTS TO THE BILL PROVIDING A NATIONAL CURRENCY, APRIL 27 AND MAY 5, 1864.

APRIL 26th, the Senate having under consideration the bill to provide a National Currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, the Committee on Finance reported an amendment to strike out this clause, —

"And nothing in this Act shall be construed to prevent the taxation by States of the capital stock of banks organized under this Act, the same as the property of other moneyed corporations, for State or municipal purposes; but no State shall impose any tax upon such associations, or their capital, circulation, dividends, or business, at a higher rate of taxation than shall be imposed by such State upon the same amount of moneyed capital in the hands of individual citizens of such State: *Provided*, That no State tax shall be imposed on any part of the capital stock of such association invested in the bonds of the United States, deposited as security for its circulation," —

and insert instead thereof another clause, which, after providing for payments to the Treasurer of the United States "in lieu of all other taxes," further declared, —

"*Provided*, That nothing in this Act shall be construed to prevent the market value of the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of all taxes imposed by or under State authority for State or other purposes, but not at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of such State; and all the remedies provided by State laws for the collection of such taxes shall be applicable thereto: *Provided, also*, That nothing in this Act shall exempt the real estate of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real estate is taxed."

Mr. Sumner saw in the report of the Committee a deference to the State banks which he feared might imperil the national system, and

he made an effort to secure for the national banks the largest immunity, believing it important to the national credit.

Early in the debate he spoke,[1] and Mr. Fessenden replied to him. April 27th, Mr. Sumner spoke again.

MR. PRESIDENT, — This question seems to me very simple. The country is now engaged in mortal struggle to establish itself as a nation. It has gone forth to meet Rebellion organized in the name of State Rights. In preparing ourselves for this unparalleled contest, we are compelled to look about in every direction to increase our army, to enlarge our navy, and to multiply our financial resources; but at every stage we are encountered by objections in the name of State Rights. No single proposition is brought forward, having for object the salvation of the Republic by infusing new energy and new vitality, which is not encountered in the name of State Rights. And now, Sir, while considering how to secure financial stability, we are doomed again to encounter the oft-repeated objection. The Rebellion began in State Rights, and all opposition to the measures conceived to crush it is in the name of State Rights. It is hard that we should be obliged to meet State Rights not only on the battle-field, but also in this Chamber.

The Senator from Vermont [Mr. COLLAMER] complained that it was proposed to sequester so large an amount of property from State taxation. The sum-total of property thus sequestered is $300,000,000[2]; but has the Senator considered how much is sequestered by other agencies to save this Republic? There is the army with all the

[1] Congressional Globe, 38th Cong. 1st Sess., p. 1873, April 26, 1864.

[2] Act to provide a National Currency, February 25, 1863, Sec. 17: Statutes at Large, Vol. XII. p. 669.

material of war, there is the navy with all the material of the navy,—all sequestered. Who complains that this vast material, now counted far beyond $300,000,000, is sequestered from State taxation? Does any Senator, in the name of State Rights, claim that the enlarged navy of the Republic, as it floats into a Northern port, shall be brought within the sphere of local taxation, whether State or municipal? Does any Senator say that all the vast material of war, ammunition, cannon, and the like, deposited, for the time being, in any particular locality, shall fall within the sphere of State or municipal taxation? Or does any Senator insist that the public securities shall be left exposed to State taxation? No Senator makes any such complaint. But the complaint is reserved for the present occasion, when it is proposed to create a new agency for the currency of the country.

I know not how the exemption can be sanctioned in one case and not in the other. The reason applicable to one is applicable to the other. It is said that the army and navy are for war, and naturally share exemptions incident to war and its preparations. But it would be difficult to say, that, in this crisis, what you do for the finances is not essentially a war measure, entitled to all the consideration accorded to such measures in a moment of war. What are your army and navy without a Treasury? Milton, in one of his sublimest sonnets, has aptly pictured that statesmanship which was able

> "to advise how War may, best upheld,
> Move by her two main nerves, iron and gold,
> In all her equipage."[1]

In these few words the very likeness is given. All who hear them will confess their truth.

[1] Sonnet XVII.: To Sir Henry Vane the Younger.

Now, Sir, no Senator complains because we protect the nerve of iron; but the Senator from Vermont registers complaints because it is proposed to protect the much more delicate nerve of gold. What is worth doing is worth well doing; and if it be worth while to organize the finances of this Republic by the proposed banking system, it is worth while to do it well; and can you do it well, if, at the very moment of its organization, you leave its most sensitive part exposed to hostile influence?

The precedent for this exemption is complete. Already you exempt the public stocks and securities from local taxation. Pray, Sir, tell me what policy justifies such exemption which is not equally strong for the exemption of shares in the national banks. Clearly, it was to commend your national stocks that you established the exemption; and for the same reason I ask you now to establish this other exemption. It is strange that the vast sequestration of the national stocks from State taxation should have been made with so little doubt, when Senators question so pertinaciously this smaller sequestration. If it was proper in one case, it is in the other. If it was necessary in one case, it is in the other.

If you allow the State to interfere with the proposed system by taxation in any way, may they not embarrass it? Where shall they stop? Where will you run a line? Undoubtedly, according to the Supreme Court, they cannot tax the bank directly. This would be unconstitutional. But it is said that they may tax the shares. Now I raise no constitutional question. It may be that a tax on shares is constitutional. But I shall not consider it on this ground. I am now arguing

against the policy of such tax. It is a question of expediency which I raise, for the sake of the system we are about to establish. But here the rule seems clear. Every consideration urged against taxing the bank directly may be urged against taxing the shares. If it be bad policy in one case, it must be in the other.

I suppose there is no judgment of our Supreme Court which has been more admired than that in the case of *M'Culloch* v. *The State of Maryland*.[1] It was pronounced by Chief Justice Marshall, and is as good a specimen of that "pure reason" which belonged to this magistrate as any that can be named. In the course of this elaborate judgment all the topics were considered which enter so peculiarly into this debate. It was there insisted that the tax was unconstitutional. But the words of the Chief Justice seem intended for the present occasion. His object, from beginning to end, was to keep the bank safe from the hostile acts of the States. It was a great effort to uphold a national institution against State Rights. It was, permit me to say, an answer in advance to the Senator from Vermont. I do not like to trouble the Senate, but there are passages so pertinent that I will read them. Here, for instance, the Chief Justice considers the ground of exemption.

Mr. Sumner then proceeded at some length to analyze the judgment of Chief Justice Marshall, reading important parts of it; and he then said: —

Now, Sir, every consideration, every argument, which goes to sustain this great judgment, may be employed against the proposed concession to the States of the power to tax this national institution in any particular, whether directly or indirectly. The reason of the judg-

[1] 4 Wheaton, R., 316.

ment is as strong against an indirect tax as against a direct tax.

After showing the character of the new system as an instrument of national credit, as the Navy-Yard and the Mint are instruments for the public service, he proceeded: —

The very measure under consideration seeks to create a new currency by a system of national banks which shall supersede the existing State banks as agents of currency. Of course the new system must begin in rivalry with the State banks, which in many cases will be hostile. This is no inconsiderable impediment. But this impediment will be increased, if the national banks be exposed to local taxation. It is an untried experiment upon which you are entering. On every account it should be made under the most favorable circumstances, — precisely as when we put stock in the market. The national banks should be commended in every possible way. But, instead, it is proposed to fasten upon them a liability, which, if it do not cause people to avoid them, will at least keep them in rivalry with the State banks, so that the new system cannot become truly effective. It seems to me that there is but one practical course. Naturally, all who are against the proposed system will favor any limitation or burden to impair its efficiency. But all who are for the system, and wish to see it doing all the good it can, will take care that it is not compelled to carry weight. The whole case may be briefly summed up. Would you place the national credit on a sure foundation? Are you for the national banks as a proper agency to this end? If these two objects interest you, then, I say, do not allow them to be sacrificed in subserviency to State Rights.

Mr. Fessenden followed in an earnest speech, vindicating the report of the Committee, to which Mr. Sumner replied.[1] The debate continued for several days.

May 5th, as a substitute for the amendment of the Committee, Mr. Sumner moved the following : —

"In lieu of all other taxes on the capital, circulation, deposits, shares, and other property, every association shall pay to the Treasurer of the United States, in the months of January and July, a duty of one per cent each half-year from and after the first day of January, 1864, upon the average amount of its notes in circulation, and a duty of one half of one per cent each half-year upon the average amount of its deposits, and a duty of one half of one per cent each half-year, as aforesaid, on the average amount of its capital stock beyond the amount invested in United States bonds; and in case of default in the payment thereof by any association, the duties aforesaid may be collected in the manner provided for the collection of United States duties of other corporations, or the Treasurer may reserve the amount of such duties out of the interest as it may become due on the bonds deposited with him by such defaulting association. And each association shall, within ten days from the first days of January and July of each year, make a return, under the oath of its president or cashier, to the Treasurer of the United States, in such form as he may prescribe, of the average amount of its notes in circulation, and of the average amount of its deposits, and of the average amount of its capital stock beyond the amount invested in United States bonds, for the six months next preceding the first days of January and July, as aforesaid; and in default of such return, and for each default thereof, each defaulting association shall forfeit and pay to the United States the sum of two hundred dollars, to be collected either out of the interest as it may become due to such association on the bonds deposited with the Treasurer, or, at his option, in the manner in which penalties are to be collected of other corporations under the laws of the United States; and in case of such default, the amount of the duties to be paid by such association shall be assessed upon the amount of notes delivered to such association by the Comptroller of the Currency, and upon the highest amount of its deposits and capital stock, to be ascertained in such other manner as the Treasurer may deem best. *Provided*, That nothing in this Act shall exempt the real estate of associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real estate is taxed: *Provided, also*, That all taxes imposed by this or any future Act on banking associations organized under national legislation shall be applied exclusively to the payment of the interest and principal of the national debt of the United States."

It will be perceived that the special object of this amendment was

[1] Congressional Globe, 38th Cong. 1st Sess., pp. 1896, 1897, April 27, 1864. See, also, pp. 1900, 1955, 1956.

to keep the taxation of the national banks in the hands of the National Government. In this aim Mr. Sumner was sustained by Mr. Chase, the Secretary of the Treasury, who, in a communication to the Chairman of the Senate Committee of Finance, May 9, 1864, said: —

"Under ordinary circumstances there might be no insuperable objection to leaving the property organized under the national banking law subject, as are almost all descriptions of property, to general taxation, State, national, and municipal; but, in the present condition of the country, I respectfully submit that this particular description of property should be placed in the same category with imported goods before entry into general consumption, and be subjected to exclusive national taxation."

Mr. Sumner spoke in the same vein.

MR. PRESIDENT, — At last, in this discussion, it is clear that we have come to the place where the road branches in two opposite directions: one toward the support of the whole country, and of that improved currency essential not only to the general welfare, but also to the common defence; and the other toward State rights, State taxation, and State banks. Which road will you take, Sir?

Or, stating the case in a different way, it is a question between the national credit, involving the interests of all, on the one side, and certain local pretensions on the other side. It is a question between the whole and a part, — between the life of the Republic and a small percentage of taxation which Senators claim for their States. The enemy is at our gates, — gold is at 180, — and yet Senators hesitate.

All are watching, at this moment, the movement of our forces under General Grant, and are longing for victory. Nothing that the country can do to make him strong is left undone. Men, money, supplies, everything is lavished; and only the day before yesterday the Senate voted another $25,000,000.

There is another field, where the battle is bloodless, but scarcely less important: I mean the field of finance. If our pecuniary resources fail, it is doubtful if the army and navy must not fail also. But victory on this field would give triumphant strength and vigor to all the operations of Government. There is no argument for the army and navy — ay, Sir, for the present support of the Lieutenant-General of the United States, in the field at the head of our military forces — which at this moment is not equally applicable to the support of the Secretary of the Treasury at the head of our *financial forces.*

How different the treatment of these two officers! Everything is given to the one, almost without debate; but little is given to the other without higgling at every stage.

There are movements pending in the field of national finance hardly less important than those in the field of war. A defeat in finance would be little less disastrous than a defeat in war.

Under these circumstances, and at this critical moment, a measure is brought forward whose real character is discerned in its title: "*To provide a national currency* secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." The primary object of this bill is not, therefore, to establish national banks, but to secure the national currency. For the sake of the currency a system of national banks is to be established; they are the means to the end. But the end sought is an improved currency. Sir, this must not be forgotten. If it were a mere question of a national bank, if it were a question between two rival systems, Senators might take sides. But who will hesi-

tate to give all that is needed, even all that is asked by the proper authorities, for an improved currency? You may seem to give much, when you abandon sources of State taxation; but you can give nothing that will not be returned tenfold, a hundred-fold, when the currency at last becomes fixed and uniform.

Glance only for a moment at the incalculable advantages of a sound currency. Gold will assume its normal place, business will be sure, values will be fixed, fluctuations will cease, inflated prices will pass away. There is not a mart of commerce, there is not a village in the whole country, that will not feel the change. But this great boon cannot be assured without corresponding effort. Like victory in the field of battle, it must be fought for and paid for.

And now, when victory seems within reach, when an improved currency is already begun, Senators hesitate in conceding those facilities without which victory is doubtful. They set up claims for their States, and insist upon certain rights of taxation. If this were a season of peace, I could appreciate the pretension; but when I consider the peril of the country, filling us all with such anxiety, — when I consider that its very being is assailed, and that it is to be defended on the field of finance just as much as on the field of battle, — I feel that every endeavor to hamper the pending measure differs little in character from an effort to hamper our soldiers in the field. We spare nothing essential to our armies; we should spare nothing essential to our currency. Men and money both are necessary; both must be cherished and protected with equal patriotic care.

. . . . .

Sir, I am unwilling to be misunderstood. I have no feeling except of kindness for the State banks, especially when they keep within the proper sphere of banks, and do not undertake to supply a currency for the country. But at this moment, when we are seeking to create a new currency, which shall be the foundation of national credit, and of national character too, I confess that I have little sympathy with anything that puts itself in the way. The State banks have performed their task as agents of currency, and the time has come for them to abdicate, — or, if they do not abdicate, at least to conform to the new system.

I do not stop to inquire if any paper issued by State banks as currency can be constitutional, — to consider if the States, which cannot coin money, can yet put paper in circulation as money. I content myself with insisting, that, whatever the constitutional merits of this question, it is no longer expedient that States should be invested with the power. We must have another system. The best interests of the whole country require it, especially at this time of national peril.

It is clear that the State banks are not competent to meet the crisis. They cannot do the business required. Besides, they are in the way. Putting their notes in circulation almost at will, the currency is inflated beyond control. Depreciation naturally ensues. Bankruptcy may follow.

When I say that the State banks are in the way, I do not use too strong language. Authentic tables show the extent to which during the last year the currency has been affected by their interference. I hold in my hand a statement from the Bank Reports for 1862, page 208, and for 1863, page 210. At the risk of wearying the Senate, I will read it.

Statement of the Circulation of the Banks in certain States, on or about 1st January, 1862 and 1863.

	1862.	1863.
Maine	$4,047,780	$6,488,478
New Hampshire	2,994,408	4,192,034
Vermont	2,522,687	5,621,851
Massachusetts	19,517,306	28,957,630
Rhode Island	3,306,530	6,413,404
Connecticut	6,918,018	13,842,758
	$39,306,729	65,516,155
		39,306,729
Total increase in New England States		$26,209,426

Being over sixty-six and two thirds per cent.

Similarly in New York, Pennsylvania, and New Jersey, we find the circulation, on or about 1st January: —

	1862.	1863.
New York	$30,553,020	$39,182,819
Pennsylvania	16,384,643	27,689,504
New Jersey	3,927,535	8,172,398
	$50,865,198	$75,044,721
		50,865,198
Total increase in New York, Pennsylvania, and New Jersey,		$24,179,523

Being over forty-seven per cent.

Aggregate Increase in the Principal Eastern States.

	1862.	1863.
New England	$39,306,729	$65,516,155
New York, Pennsylvania, and New Jersey	50,865,198	75,044,721
	$90,171,927	$140,560,876
		90,171,927
Aggregate increase in Eastern States		$50,388,949

Being over fifty-five and three fourths per cent.

These tables speak. They show the range within which the State banks undertake to operate, and their consequent interference with the national system. If it be said that in certain parts of the country, as in New England and New York, the State banks have performed good service, I reply, that, even admitting all that is claimed, the service is local and incomplete. It does not embrace the West.

The present endeavor is to provide a remedy for this trouble by a comprehensive national system, discharging the function performed by the State banks, and embracing the whole country. It is called national because it belongs to the nation, and not to any particular State, and because its origin, aim, and inspiration are all national. It is conceived in no hostility or unkindness to the State banks, but in a patriotic purpose to do what can be done to secure what all desire, — a national currency. The State banks will be welcome to a place in the system, like State troops coming forward for the defence of the Republic; but they cannot be tolerated, if they stand aloof, or refuse to take the post assigned them. At a moment of peril, when the Government is bending all its energies to save the national currency, a mutiny among State banks will be hardly less disastrous than a mutiny among State troops. Every murmur or mutter of such mutiny ought to be repressed at once. All should be summoned to perfect and harmonious coöperation in that cause which embraces the whole country, in every walk of life, whether military or civil.

I know not how others are impressed, but to my mind it is difficult to imagine anything, short of those everlasting principles of human freedom involved in

this war, which should at this moment be more carefully watched than the currency of the country. Let this be safe, and everything will be safe, — army, navy, and the whole national cause. Such a currency will constitute an epoch in the history of the country, — ay, Sir, in the history of the world. There have been ministers in other countries and other times whose names are immortal from association with commercial reforms. Colbert was the founder of the commercial system of France; Peel was the founder of free trade in England. But the present Secretary of the Treasury, when the new system is at last triumphant over all obstacles, including the mutiny of State banks and the lukewarmness of Senators, may boast that he has given a currency to his country. Next after the great gift of human freedom there is nothing greater he could give, — nothing that comes home so completely to the business and bosoms of the people, rich and poor, throughout our wide-spread empire. An improved currency is like sunshine, penetrating every corner of the land, under which commerce, business, comfort, civilization, life itself, will put forth blossom and fruit. Nobody in the community too high, nobody too low, not to feel the new-found boon filling every household and travelling on every highway. But it is seen now in another aspect. An improved currency is like a new levy of national troops, a new navy afloat, a new contribution of supplies. It is the herald and assurance of untold success. In itself it is a present daily victory, — fruitful parent of victory everywhere.

Such is the object proposed, — important at any time, inconceivably important at this moment. And the question recurs, Are you for a national, life-giving

currency, or are you for the State banks? You cannot be for both; one must yield to the other. If you are for the former, you must abandon the State banks, or compel them to enlist in the national cause.

Massachusetts — which has a larger bank capital in proportion to her population than any other State, and, moreover, looks to taxation of this capital as a chief source of income — has already, by her patriotic Governor, volunteered support to the national banks.

Here Mr. Sumner quoted from the Address of Governor Andrew to the Legislature of Massachusetts, January 9, 1863.

Such is the testimony of Massachusetts, by the lips of her brave Chief Magistrate. Seeing the object before us, he raises no question of State rights, presents no claim of State taxation, makes no plea for State banks.

Sir, it is vain to think that you can keep both systems at the same time. One must yield to the other. But if you sincerely desire the national system to prevail, then must you so endow and protect it that it will be commended to the public, and that investments will naturally seek it. Therefore every privilege you confer, every immunity you give, every exemption you establish in its favor, must naturally contribute to its strength, and make it more effective for its transcendent purposes.

This is the day of sacrifice. Families are offering sons and brothers. States are giving their citizens, and every citizen is contributing according to his means to the safety of the Republic. But there is one other sacrifice now required: it is the sacrifice of the State banks as agents of currency; and this sacrifice requires

that the local taxation should be suspended with regard to the national currency, and that all the proceeds of such local taxation should be passed to the credit of the whole country. You must do for the national currency precisely what you do for the national securities. Here are the words of the statute: —

"And all stock, bonds, and other securities of the United States, held by individuals, corporations, or associations, within the United States, *shall be exempt from taxation by or under State authority.*"[1]

The reason which sustains the exemption in this case is equally applicable in the other.

But we have other exemptions from local taxation.

There are the imports of the country, which no State or municipality can tax.

There are the army and navy, and all the material of war, — ships, arms, munitions, commissariat supplies, — all exempt from local taxation.

There are the public lands of the United States, which no local authority can touch.

There is the Mint, which is untaxed.

There are the public buildings in Washington, the National Capitol, the Executive Mansion, the offices of the heads of Departments, covering large spaces of ground, all secured from local taxation.

But no reason can be assigned for exemption in these cases that does not prevail with regard to the currency. Nay, at this juncture, when our object is, above all things, to secure a national currency, the reason for exemption is of special and unanswerable force.

[1] Act to authorize the Issue of United States Notes, Sec. 2, February 25, 1862 : Statutes at Large, Vol. XII. p. 346.

We have more than once been warned not to slay the goose that lays the golden egg, — meaning by this goose the State banks. But all who use this illustration forget that there is another bird, which lays such eggs as no State banks can hatch, — eggs not merely of gold, but of victory. It is the *national credit*, which Senators seem willing to abandon, if not to slay; and it is the national credit which I now insist shall be preserved at all hazards.

Mr. President, I was not a sharer in the counsels that originated this measure. Had I been consulted, I know not that I should have originally advised the experiment in its actual form. Clearly, something was necessary for the sake of the currency, and for the sake of the country; and after proper consideration the present system was adopted. Operations under it have already commenced; $60,000,000 of capital have been organized according to its requirements. It is too late to retreat. It only remains that you should go forward, not sluggishly, heavily, reluctantly, but bravely, confidently. The financial enterprise already begun must be finished and protected. Here I cannot hesitate. If the system is to be maintained, if it is not to be utterly abandoned, it must be placed under the most favorable auspices, so at least that it may not fail from any want of care on our part. It should be made strong in itself, and then it should be surrounded with an atmosphere congenial and friendly. For this reason I shall vote to keep it free from all State hostility and even State rivalry, that it may become in reality, as in name, wholly national.

Sir, I am told that it will be unpopular to make this sacrifice, and ancient ghosts are paraded through this

Chamber to frighten us from duty. Naturally, all who are against the proposed system will be against the seeming sacrifice. But the people are too intelligent not to see what is demanded by the best interests of the national currency; and unless I greatly err, they will insist that what we do shall be so done as to make our work most effective and most triumphant, to the end that victory may be certain. It is on no narrow ground that I make my appeal. I speak for a national currency which shall be to the whole country like the horn of abundance; and I plead for it now, as essential not only to the general welfare, but also to the common defence.

Mr. Fessenden replied to Mr. Sumner with severity. On the other hand, Mr. Chandler, of Michigan, recognized as a business man, said: "The country owes the Senator from Massachusetts a debt of gratitude for his patriotism and statesmanship. He has risen above small matters, above local, petty interests, and has come up to the standard of the broadest statesmanship, in the argument he has just delivered, which is one of the ablest financial arguments ever delivered on this floor."

Mr. Sumner's amendment was lost, — Yeas 11, Nays 24. The amendment of the Committee was then agreed to, — Yeas 29, Nays 8.

BRANCH MINTS AND COINAGE.

SPEECH IN THE SENATE, ON THE PROPOSITION TO CREATE A BRANCH MINT IN OREGON, APRIL 29, 1864.

THE Senate having under consideration a bill to establish Assay Offices at Carson City, in the Territory of Nevada, and Dalles City, in the State of Oregon, Mr. Nesmith, of Oregon, moved to strike out the section establishing an Assay Office at Dalles City, and insert several sections establishing a Branch Mint there, instead. This was contrary to the recommendation of the Finance Committee, and also to communications from Mr. Pollock, the Director of the Mint at Philadelphia, and Mr. Chase, Secretary of the Treasury, sustained by Mr. Fessenden in the Senate.

April 29th, Mr. Sumner spoke.

MR. PRESIDENT, — When this subject was under consideration before, I voted with the Committee, partly because it is my habit to vote with committees on matters within their special consideration, and partly because at the time I was under the impression that their report was justified by correct principles. Subsequent reflection has induced me to hesitate in this conclusion.

Much dependence has been placed upon the report of the Director of the mint at Philadelphia. Now, Sir, if he had contented himself with giving an opinion against establishing a mint in Oregon, without assigning reasons, I might have respected his opinion; but when he puts forward as his first great objection that the multi-

plication of mints will tend to "national disintegration," I confess that I join with the Senator from Oregon [Mr. NESMITH] in distrusting his conclusion. What confidence can anybody have in anything founded on such premises, which experience, if not reason, shows to be false? Why, Sir, the author of this opinion forgets that in the country most centralized in the world, where all the agencies of Government converge in a single capital, — I mean France, — there have been for a long time, even within its comparatively contracted borders, more than half a dozen different mints. Besides a magnificent central mint at Paris, there are, or were very recently, auxiliary mints at Lyons, Marseilles, Bordeaux, Lille, Rouen, and Strasbourg. I never heard that this multiplicity tended toward "national disintegration." France still continues one and indivisible; and I doubt if there would be any difference in this respect, even if there were a mint in every one of her eighty-six Departments. Really, the Director of the Philadelphia mint ought to have borne in mind the famous instructions of Lord Mansfield to the colonial magistrate, and contented himself with an opinion without assigning reasons.

There is a different consideration, to which I confess that I am not insensible. It is the importance of a correct and finished coinage, which it seems natural to suppose best promoted by a single mint. On this point I am disposed to agree with the Director. But our Government has not acted on this principle.

If circumstances favored the consolidation of the national coinage at a single mint, I can conceive that there would be advantages of an unquestionable character. Indeed, if we repair to France, where the mints have been in times past so numerous, we find that these

advantages have not been denied. I suppose that the most authoritative testimony on this subject, whether we look at it in the light of theory or of practice, is found in that country; and if we seek special authorities, there is nothing so instructive or ample as the report of Dumas and De Colmont, made in 1839, under a commission from the French Minister of Finance. This document, with its minute disclosures on the operations of mints, was for some time kept secret in France. I have understood that only *twelve copies* were printed for the use of the Commission, who were placed under a solemn obligation not to divulge it. But I believe it found its way to publicity at the time of the Parliamentary inquiry into the Mint in 1849, which resulted in a valuable blue-book.

The testimony of Dumas is for a single mint. He dwells especially on two considerations,— economy, and the perfection of the coinage; and these he places above local interests demanding multiplicity of mints. The figures by which he illustrates the superior economy are very striking. *These assume that the metal is already delivered at the mint,* — a point not to be forgotten on the present occasion. Beyond his own opinion on the question of perfection, Dumas quotes the testimony of Basterrèche, Regent of the Bank of France, who, after an examination of the subject as long ago as 1800, very positively declared that "the perfection of labor which ought to distinguish a great nation imperiously required a single mint, placed under the immediate superintendence of the Government." And he also quotes the testimony of Humann, Minister of Finance, who, in presenting his budget in 1835, declared that the Paris mint was adequate to do all the coinage required in

France, — that the concentration of labor there would promote improvement in the processes of production, — that in this way the Government would be relieved from the expense of different establishments, — that all the money from the same mint would be identical in character, and in proportion as it acquired perfection would be less exposed to counterfeiting, — and, in fine, that the superintendence of the Government would be a guaranty of security, which does not exist where the work is distributed in a large number of establishments. Such was the testimony of the minister, adopted by the illustrious authority in science, Dumas. Perhaps the case could not be stated stronger. Yet it did not prevail in 1800, when it was first given, — nor in 1835, nor in 1839, — even in France, where the tendency to concentration is so active, where the facilities for it are so great, and the disposition to take counsel of science is so confirmed. And surely there must be a reason why it did not prevail.

Dumas says, in rather contemptuous phrase, that "on one side is a petty local interest, in a great degree imaginary."[1] But if this "petty local interest" were of sufficient importance to prevail for so long a time in France, against such influences, it must be because there was something of intrinsic strength in its character. I allude thus minutely to this testimony, because I would not keep anything out of the discussion calculated to shed light, and because it seems to me that the long-continued practice of France, in spite of such testimony, must not be disregarded in our endeavors to arrive at a true policy.

Thus far our Government has followed the teachings

[1] Rapport, p. 70.

from the practice of France, rather than from its science on this subject. It renounced, some time ago, the policy of a single mint, acting, it may be supposed, under other considerations of a controlling character. The statute of March 3, 1835, entitled "An Act to establish branches of the Mint of the United States,"[1] provides for mints at New Orleans, Charlotte, in North Carolina, and Dahlonega, in Georgia, — the two latter for coinage of gold only. Since then there has been provision for mints at San Francisco, Denver, and Carson City.

I have not before me the most recent statement of the production at these different mints; but this is not necessary for illustration. If we take the year 1851, we find that the number of pieces, gold, silver, and copper, produced that year, was as follows: —

Philadelphia	24,985,736
New Orleans	3,527,000
Charlotte	105,366
Dahlonega	83,856

So that mints were kept up at the two latter places merely to manufacture a very small amount of coin, and the reason assigned was, that gold was produced in the neighborhood.

Looking at the cost of production at these different places, we find that at Philadelphia it was only forty-two hundredths per cent, — at New Orleans, one and eight hundredths per cent, — at Charlotte, three and fifty-five hundredths per cent, — at Dahlonega, three and thirteen hundredths per cent. But, great as was the economy at Philadelphia, compared with that at

[1] Statutes at Large, Vol. IV. p. 774.

the other mints, we find that at the Paris mint the same production costs one half less.

If we look further at the mints of Charlotte and Dahlonega, it is easy to see how every consideration of economy was against them. With a single Munich press in the mint at Charlotte, the whole annual coinage there would have been accomplished in thirty-five hours; and with a similar press at Dahlonega, the whole annual coinage there would have been accomplished in less than twenty-eight hours! Experience shows that one Munich press will coin in a day of ten hours, allowing one sixth of the time for stoppages and accidents, thirty thousand pieces. Of course the coinage at these two places must have been at an expense much beyond that of Philadelphia. It would be more economical for the Treasury to pay the cost of transporting the gold from these places to Philadelphia. And doubtless this would be done, if the question of economy were alone involved.

I refer to these instances as illustrations of the policy already adopted. I need not say that they do not commend themselves to my judgment, especially when it is considered that in all probability the coinage at these mints, besides being expensive, was also of an inferior quality.

But the vast products of gold in distant California presented the question in a new form. Unexpectedly, the early prodigies of Mexico and Peru were renewed. Private persons were suddenly enriched. Gold was turned up like clods of earth, or washed from sands deposited by mountain torrents. Where gold so abounded, the currency of the country was naturally in this metal, which thus performed its double function of

merchandise and money. Should all this treasure be sent far away to Philadelphia for coinage? The answer of reason, convenience, and commerce was clearly against such enforced transportation. A mint became a necessity. Even assuming that the coinage could be executed with more economy and perfection at Philadelphia, it is evident that the local interests of California were too important to be neglected. The mint was established, and during the last year gold has been coined there to the amount of $17,510,960, while the smaller amount of $3,340,931 was the sum-total of gold coinage during the same time at Philadelphia.

It is now proposed to create another mint in Oregon, and the reasons for it are similar to those which prevailed in the case of California. The region is fruitful in gold, if not to the same extent as California, yet so much so as to require similar facilities for coinage. It seems that the amount received at three private assay-offices in the city of Portland, from January 15th to October 20th of the last year, reached $2,486,496. Compare this sum with the paltry yield at Charlotte or Dahlonega, where mints were established and maintained down to the Rebellion. The mines of Peru have been proverbial for richness; but the sum-total of their product in 1858 was only $6,000,000. That of Chile was $5,000,000; and that of Bolivia was only $2,000,000,— being less than the product of Oregon for nine months.

Here, again, the considerations of science, so strong in favor of a single mint, seem to lose their applicability, or rather they fail in presence of other considerations not to be neglected. Sir, we cannot forget in legislation that it is no narrow territory that comes within

our jurisdiction, but that it is a vast region, washed by two great oceans and separated by intervening mountains. A rule which may be proper in a country like France becomes inapplicable to a country so vast in space. If all our States were huddled together on a single seaboard, perhaps a single mint might suffice. In such a case economy and perfection of coinage might be exclusively consulted. But the interests of business on the Pacific coast must not be sacrificed even to these considerations. Spain still has mints at Madrid and Seville, although at the latter place the coinage is chiefly confined to copper; but in former days, while Mexico was a Spanish province, there was a Spanish mint there, — for the same reason, I suppose, that a mint is now proposed in Oregon.

The consideration from distance alone cannot be disregarded. Oregon is more than five thousand miles from Philadelphia, and seven hundred miles from San Francisco. It is impossible to legislate for such immense spaces as you would legislate for a European kingdom, where every part is within easy distance of the metropolis.

In England a single mint transacts the business of that commercial country. But I need not remind you that all its immense commerce is conducted within a small territory. In Holland, also, there is only a single mint, — although during the days of the Republic there was a mint in each province. Afterwards these were abandoned, and one mint for the whole kingdom was established at Utrecht. But here again I remind you of the narrow space of territory served by this mint.

The whole question is obscured by considering gold, when coined, as exclusively currency, whereas it is also

merchandise. In this latter character it comes under the laws governing commerce in other articles. If we go back to Aristotle, we find a definition difficult to improve in our day. "It is agreed," says this master of thought, "to give and receive in exchange *a substance which, useful in itself,* is easily managed in the usage of life: as, for example, iron, silver, or such other substance as shall have a determined dimension and weight, and which, in order to avoid the embarrassment of continual weighing, *shall be marked by a particular stamp as the sign of its value.*"[1] In quoting these words, Michel Chevalier, the political economist and new-made Senator of France, who has given much attention to this subject, rightly says that the whole question is admirably put and at the same time determined.[2] But the same idea has been presented by Adam Smith in his remarkable work on the Wealth of Nations. "The qualities," he says, "of utility, beauty, and scarcity are the original foundation of the high price of those metals, or of the great quantity of other goods for which they can everywhere be exchanged. *This value was antecedent to and independent of their being employed as coin, and was the quality which fitted them for that employment.*"[3] Therefore it must not be forgotten that coin is something more than money; it is merchandise also. In this character it plays a conspicuous part in the commerce of the world. It differs in bulk from the lumber of Maine, but it is just as much an article of merchandise.

Regarding gold as merchandise, we see how clearly

[1] Politics, Book I. ch. 9.

[2] De la Baisse probable de l'Or, Sec. II. ch. 1.

[3] Wealth of Nations, Book I. Ch. 11, Part 2, (London, 1802,) Vol. I. p. 269.

in certain places and under certain circumstances it escapes from the scientific laws applicable especially to coinage. Gold is unique among articles of commerce. Every other article allows discussion as to its quality. Cloth or wool may be more or less fine; flour more or less bolted, or it may be made from hard or soft wheat. But gold is chemically a simple body, and, when once refined, perfectly homogeneous, whether from California or Siberia, from the sands of Transylvania or the poorer sands of the Upper Rhine. Let it be once brought to any arbitrary standard, as, say, nine tenths, and there is no difference in its character. But this degree of fineness must be established *in authentic manner*, — otherwise transactions in this article may be arrested at every moment. The delicate agencies necessary for determining its value are not easily accessible. The Government, therefore, as representative of the community, after refining and weighing gold, puts upon it a stamp which guaranties its weight and fineness. Thus, the eagle, with the stamp of ten dollars, is a piece which, according to the Act of Congress of 18th January, 1837,[1] weighs two hundred and fifty-eight grains, with nine tenths of gold and one tenth of alloy. The English sovereign is a stamped piece of gold twenty-two carats fine, and of such weight in proportion to the troy ounce that £ 3 17*s.* 10½ *d.* make an ounce. The French franc is a stamped piece of silver weighing exactly five grammes, and nine tenths fine.

But in our country, and now especially in California and on the Pacific coast, gold has become a principal article of production and exportation, like wheat or cot-

[1] Statutes at Large, Vol. V. pp. 137, 138.

ton. Such is its character that it instinctively seeks *inspection*, in order to secure a guaranty and recommendation. Now every State has its inspectors, for instance, of flour, pot and pearl ashes, fish, beef, and pork. In Massachusetts there are inspectors of sole-leather, although a hide of leather is open on all sides. But, if gold be regarded as merchandise, there is more reason for its inspection. As it is more portable than these other articles, so it is also more valuable, more easily lost, more easily stolen, and more provocative to plunder. Therefore it is entitled to peculiar safeguards.

Here, then, is the case in a nutshell. California is already a large exporter of gold as merchandise. Oregon is now commencing a similar career. But the gold there ought to have every advantage as merchandise which it can derive from the inspection of the Government. Call it protection, if you will; but I beg to submit that an interest so important, so peculiar, and so delicate, deserves this protection.

If it be said that all this may be accomplished by an assay office, I reply, that this does only partially what is accomplished by the mint. The gold is delivered back in ingots stamped, so that for certain purposes it is merchandise; but the work is only half done. If the quantity were trivial, as at Charlotte and Dahlonega, then an assay office would suffice; but where the supply is so great as in California or Oregon, it would seem as if no pains ought to be spared by the Government to facilitate the commerce in this article, or to meet the desires of its producers. Now it is obvious that nothing in this respect can equal the stamp upon the national coin. A courtier said to Philip the Second of Spain, "Your golden ducats carry your

name and your features over all the countries of Europe, exciting envy and dread." The time for envy and dread has passed; but our eagles are not idle. There is their inscription, *E pluribus unum*, an unquestionable stamp of nationality and value, which they carry wherever they go.

Therefore, Sir, while admitting, that, for the sake of the coin, there should be the highest accuracy possible in the operations of the mint, I cannot hesitate to insist, that, regarding gold as merchandise, the mint must be established in such localities as may be required by the interests of commerce.

I do not think there would be any hesitation in this conclusion, if the whole subject of coinage had not been shrouded with a certain mystery, almost like the "black art." This appears constantly.

> "They cannot touch me for *coining;*
> I am the king,"

says Shakespeare; and Pope says, —

> "She now contracts her vast design,
> And all her triumphs shrink into a coin."

Like other incidents of sovereignty, coinage is reserved rightfully to the Government, and on this account is little appreciated in its true character. People sometimes err in not seeing that the delicate laws applicable to this subject must not be strained to interfere with the proper regulation of the value of gold when it has become a principal article of commerce.

Objection is also made on the ground that a mint is necessarily an expensive structure. But this is a mistake, arising partly from the general mystification on the subject, and partly because the Philadelphia mint,

which we have all seen, is an expensive structure. A mint, in plain terms, is nothing but a foundry provided with good locks and keys. If finished elaborately and expensively, it may attract the eye, but does not become more useful. The whole system of coinage has been twice changed during the present generation: first, by the change in assays of Gay-Lussac in 1830; and, secondly, by the introduction of the Munich press worked by steam, instead of the old hand-press with two ponderous balls as flies. And the Munich press itself has been much improved in France by Thonnelier. Now a mint should not be so costly as not to receive easily all improvements. The science of metallurgy is still in progress of development, and it cannot be doubted that the coming generation will witness improvements as important as any during our day. The eminent French authority to whom I have already referred, Dumas, was in the habit of ridiculing the expensive mints constructed in France. He desired that the present mint at Paris should be surrendered to some public office, and the business removed to an open space in the suburbs. In his Report he has furnished estimates showing the small expense of a mint, according to his ideas, adequate to all the coinage of France.

If you would see how the cost of a mint in our country may swell, at least in calculations on paper, if not in reality, I refer you to the memorial of the Board of Trade of Philadelphia in relation to the establishment of a branch mint at New York in 1852. But the mint pictured here is anything but the simple foundry which I have described, or the workshop which the Senator from Oregon asks you to authorize.

Mr. President, I hope that I have not occupied too much time with this statement. I am led to make it in order to show, that, in differing from the Committee on Finance, I have not proceeded without proper consideration. There are topics connected with the subject to which I do not allude, because I desire to confine my remarks to the points in issue. There are also details as to the cost of coinage in a well-regulated mint, involving the question of seigniorage, and the essential difference between the systems of England and France, which I should be glad to present; but I have said enough. There is, however, one practical remark, founded on the example of Spain, which I venture to add. It was the habit of this power to require that the initial letter of the place of coinage should appear on every piece, so that the coin from Madrid bore an M, from Seville an S, and that from Mexico M. This precaution rendered each mint responsible for its own work. In France, also, every mint had its special mark. The coins struck at Paris bear the letter A. Perhaps a similar requirement in our country might stimulate greater care in the several mints, by creating an honorable rivalry.

There is one other remark which I would make before I close. Much stress has been placed upon the opinion of the Director of the mint at Philadelphia. Indeed, the whole case against the proposed mint has been allowed to rest on his letter, which begins so whimsically. I hope that I have not spoken of him too freely; but, since his authority is invoked, I am led to ask if there is anything in his studies or scientific attainments calculated to render him a court without appeal on this question. It is obvious that his posi-

tion for the time being subjects him to influences hostile to new mints. He naturally seeks to amplify his jurisdiction, and to keep the tide of gold secure so that it shall not ebb from his marble building. Perhaps I do not use too strong language, if I say that he is under inducements to play the pedant for his own mint, and to quote it against every other mint. At all events, I think the Senate will be satisfied that on the present occasion he ought to be overruled.

The amendment creating the Branch Mint was adopted, — Yeas 23, Nays 16, — and the bill passed.

REFORM IN THE CIVIL SERVICE.

BILL IN THE SENATE, APRIL 30, 1864.

APRIL 30, 1864, Mr. Sumner asked, and by unanimous consent obtained, leave to bring in the following bill, which was read twice, and ordered to lie on the table and be printed.

This was a first effort for Civil Service Reform.

A BILL to provide for the greater Efficiency of the Civil Service of the United States.

BE it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he hereby is, authorized to appoint, by and with the advice and consent of the Senate, a Board of Examiners, consisting of three Commissioners, at salaries of dollars a year. And the Commissioners may appoint a clerk to the Board, with an annual compensation of two thousand dollars. And these sums, and the necessary expenses of the Board, including rent and the travelling expenses of the Commissioners and clerk, shall be paid from any money in the Treasury not otherwise appropriated.

SECTION 2. *And be it further enacted,* That no person shall be appointed, after the date of this Act, to any civil office under the United States, whether by way of original appointment or promotion, unless re-

commended by a certificate of the Board: *Provided*, That this shall not apply to offices the appointing power to which is by the Constitution vested in the President by and with the advice and consent of the Senate: but applicants for such offices shall be examined by the Board, if they present themselves, and shall receive certificates in the same manner as other applicants.

SECTION 3. *And be it further enacted*, That the Board shall hold examinations of applicants for civil office under the United States at such places as they may designate, and at times to be determined by consideration of the needs of the service, and the number of vacancies to be filled, after consultation with the President, courts, or heads of departments, as the case may be, and after public notice of the time, place, and regulations of the proposed examination.

SECTION 4. *And be it further enacted*, That applicants for examination shall be citizens of the United States, (including all persons born in the United States, and not owing allegiance elsewhere,) between the ages of eighteen and twenty-five, and shall furnish such testimonials of personal character and take such oath of allegiance as the Board shall prescribe: *Provided*, That, if the examination is for any office the duties of which are to be performed in any particular State, then the applicant, in addition to the above requirements, shall have resided in such State one year before the time of examination, and in such case the Board shall designate a place of examination within such State: *Provided, however*, That the President may suspend the operation of the preceding proviso as to any States or parts of States where he may deem it expedient so to do.

SECTION 5. *And be it further enacted*, That the Board shall determine, after consultation with the President, courts, or heads of departments, as the case may be, upon the subjects of examination, and also whether the examination shall be oral, written, or both, and shall have full discretion as to the regulation of the examinations, and may employ such learned and honorable men as they may see fit to assist in the examinations, or to superintend examinations in their absence, and shall report their doings annually to Congress.

SECTION 6. *And be it further enacted*, That the Board, after the examination, shall assign the rank of the applicants, according to the degree of merit and fitness shown; and he who stands at the head of the list shall have the choice of vacancies in the particular department or branch for which he was examined, and so on down the list to the minimum of merit fixed by the Board, beyond which no certificate shall be given. The Board may, if they see fit, assign the right of seniority as a result of the first examination, or may require a further examination, the result of which shall determine seniority.

SECTION 7. *And be it further enacted*, That, after the appointment of a candidate recommended by the Board, he shall not be removed except for good cause, and promotions shall be according to seniority, which shall be determined in all cases by the dates of the recommendations of the Board and the rank therein assigned; but it shall be allowable to make one fifth of the promotions on account of merit irrespective of seniority.

This bill found an unexpected response from the public press. The *National Intelligencer*, at Washington, welcomed it.

"The object of this bill commands our entire approval, and we hope it

may equally receive the approval of Congress. Its passage, more than any other single decision that could be taken by Congress in the way of needed reforms, would tend to correct abuses which threaten our whole political system with wreck and ruin."

The *Evening Post*, of New York, was equally explicit.

"This bill, if passed, would do away with what has become one of the most serious vices in our political life, the 'Spoils system,' as it has been appropriately called. Congress should, as soon as possible, provide some rules for the reformation of this universal evil. The patronage of the President and his Cabinet officers has increased, is increasing, and ought to be diminished; it has become, by the extension of the country, the increase of population and wealth, and especially through the circumstances of the present war, so vast as to be dangerous to the nation, if it should chance to fall into the hands of unscrupulous and wicked men. But, besides this, it is manifestly impossible to carry on the immense business of the Government without extraordinary and ruinous loss and waste, under the old system of turning out the occupants of civil offices every four years. The Government thus virtually refuses the services of trained men, familiar with the office routine. If we desire public affairs to be administered honestly and economically, Congress must provide for the numerous servants of the Government regular grades of promotion, retention of office during good behavior, and, if possible, a small retiring pension, which might be arranged in the shape of an annuity and life insurance combined."

The New York *Times* noticed it at length, beginning, —

"Mr. Sumner has introduced a bill into the Senate, which, owing to the general absorption of the public attention in the great events which are taking place in the field, will probably not attract much notice; but it nevertheless attempts to deal with a matter which is of more importance, we venture to say, to the stability of this Government than any other one thing except the extinction of the Rebellion. It is neither more nor less than a sweeping measure of administrative reform, obliging all candidates for situations in the public service to pass an examination before a board appointed for the purpose, giving them their offices during good behavior, and with promotion through the various grades in the order of seniority, and a retiring pension after a certain term of service."

The *New Nation*, of New York, said : —

"Mr. Sumner has recently brought a bill in the Senate to regulate the conditions of admission to public offices of the highest importance to the country. This bill is based upon the most equitable, the most sincerely republican, and the most progressive principles as yet adopted in any country. We have not sufficient space to review this project at present. At the first glance we find it deficient only in one respect, namely, in carrying respect

for seniority to too great an extent. If this bill is passed, the era of inefficiency and favoritism, hitherto prevailing, will be at an end."

The New Bedford *Mercury* said : —

"Mr. Sumner's bill will cure the evils of which every sensible man now complains, and avert the terrible dangers which menace us. It contemplates a return to the practice of the better days of the republic, and making that practice the rule. 'Is he capable? Is he honest?' were the inquiries propounded by Jefferson, when a candidate for office was named."

The New York *World* devoted a leading article to the bill, which it criticized.

"We had supposed, that, in the opinion of Mr. Sumner, the disposition to be made of black men came nearest, in legislative importance, to the crushing out of the Rebels. . . . . Mr. Sumner's bill does not touch the evil in our clerical system. The difficulty is not in want of examination, classification, promotion, or pension, but springs, in the first place, out of the manner in which the President, through the heads of departments, exercises the appointing power, and, in the next place, out of the conduct of the clerks themselves, when in office. An examining board cannot change the general character of the men the President, directly or indirectly, sends before it."

These notices show the interest excited by this effort. In the various labors which occupied Mr. Sumner he was not able to give it the attention it required. Meanwhile the cause found an able advocate elsewhere.

The next step was by Hon. Thomas A. Jenckes, of Rhode Island, who introduced into the House of Representatives, December 20, 1865, a bill "To regulate the Civil Service of the United States," which was referred to the Committee on the Judiciary. Subsequently a special committee was appointed on the Civil Service of the United States, with Mr. Jenckes as Chairman, and June 13, 1866, he reported his bill to the House. Then again, at the next session, he reported another bill, "To regulate the Civil Service of the United States, and promote the efficiency thereof," which he sustained by a forcible and elaborate speech ; but the bill was laid on the table, — Yeas 72, Nays 66. Other efforts followed at subsequent sessions, but without success.

Meanwhile, in the Senate, on motion of Mr. Trumbull, of Illinois, March 3, 1871, the following section was attached to the General Appropriation Bill, then pending : —

"That the President of the United States be, and he is hereby, authorized to prescribe such rules and regulations for the admission of persons into the

Civil Service of the United States as will best promote the efficiency thereof, and ascertain the fitness of each candidate, in respect to age, health, character, knowledge, and ability, for the branch of service into which he seeks to enter; and for this purpose the President is authorized to employ suitable persons to conduct said inquiries, to prescribe their duties, and to establish regulations for the conduct of persons who may receive appointments in the Civil Service." [1]

Under this provision President Grant appointed the following Commissioners: George William Curtis, of New York; Alexander G. Cattell, of New Jersey; Joseph Medill, of Illinois; and Dawson A. Walker, E. B. Elliott, Joseph H. Blackfan, and David C. Cox, of the District of Columbia: who, after careful consideration during the summer and autumn, submitted a report December 18, 1871, with a schedule of rules and regulations, all of which was promptly communicated to Congress by the President.

[1] Acts, 1870-71, Ch. 114, Sec. 9: Statutes at Large, Vol. XVI. pp. 514, 515.

COLORED SUFFRAGE IN WASHINGTON.

REMARKS IN THE SENATE, ON BILLS TO AMEND THE CITY CHARTER, MAY 12, 26, 27, 28, 1864.

FEBRUARY 13th, Mr. Harlan, of Iowa, asked, and by unanimous consent obtained, leave to bring in a bill to amend section five of an Act entitled "An Act to continue, alter, and amend the charter of the city of Washington," approved May 17, 1848, and further to preserve the purity of elections and guard against the abuse of the elective franchise, by a registration of electors for the city of Washington, in the District of Columbia; which was read the first and second time, and referred to the Committee on the District of Columbia.

March 8th, Mr. Dixon, from the Committee, reported the bill without amendment.

March 17th, the bill was taken up and amended in unimportant particulars.

May 6th, it was again taken up, when, after an amendment moved by Mr. Dixon, Mr. Cowan, of Pennsylvania, moved to amend the bill in the first section by inserting the word "white" before the word "male," so as to confine the right of voting in Washington to white male citizens. Mr. Sumner said at once, "I hope not." Mr. Cowan then spoke in favor of his amendment.

May 12th, Mr. Cowan remarked that the bill "would have the effect, in some cases, of admitting negroes to the right of suffrage, which, I may say, is obnoxious to the vast bulk of the people of the Border States." Mr. Harlan would vote for Mr. Cowan's amendment, "first, because it is manifest to the Senate that the bill, without that provision in it, cannot now become a law." Mr. Willey, of West Virginia, spoke elaborately against colored suffrage, winding up with this interrogatory: "Shall we, without any petitions from the people of this District, without anything before the Senate to indicate that this bill, in any of its parts, is required by the people of this District, undertake to say, of our own volition, that we will impose upon them a provision which is odious to them, and will, in my estimation, be disastrous in its results,

not only here, but in its influence on popular opinion everywhere in this nation?"

Mr. Sumner followed.

MR. PRESIDENT, — Slavery dies hard. It still stands front to front with our embattled armies, holding them in check. It dies hard on the battle-field. It dies hard in the Senate Chamber. We have been compelled during this session to hear various defences of Slavery, sometimes in its most offensive forms. Slave-hunting has been openly vindicated. And now, to-day, the exclusion of colored persons from the electoral franchise, simply on account of color, is openly vindicated, and the Senator from West Virginia, newly introduced into this Chamber from a State born of Freedom, rises here to uphold Slavery in one of its meanest products.

MR. WILLEY. Mr. President, I cannot pass that assertion without giving it an unequivocal, categorical denial. I have not vindicated Slavery in any of its aspects. I said to the Senator, what perhaps he did not hear before, that, when he has liberated by the sweat of his brow as many slaves as I have, he can get up and make such a remark in regard to me.

MR. SUMNER. I said, Sir, that the Senator vindicated Slavery in one of its meanest products. I repeat what I said. The Senator has spoken, I do not know how long by the clock, to vindicate an odious prejudice bequeathed by Slavery, having its origin in Slavery, and in nothing else. Had Slavery never existed among us, there would have been no such prejudice as that of which the Senator makes himself the representative. Far better would it be for that Senator, who comes into this Chamber as the representative of a new-born free State, had he surrendered generously to the sentiment in which West

Virginia had its birth. But, instead, he comes forward and labors with unwonted earnestness to perpetuate at the national capital an odious feature derived from Slavery. The Senator says he has not vindicated Slavery. If he has not used the word, he has vindicated the thing, in one of its most odious features. He seeks to blast a whole race merely on account of color. Would he ever have proposed such injustice, but for the prejudices nursed by Slavery? Had not Slavery existed, would any such idea have found place in a Senator naturally so generous and humane? No, Sir, —he spoke with the voice of Slavery, which he cannot yet forget. He spoke under the unhappy and disturbing influences which Slavery has left in his mind.

Now, Sir, I am against Slavery, wherever it shows itself, whatever form it takes. I am against Slavery, when compelled to meet it directly; and I am against Slavery in all its products and its offspring. I am against Slavery, when encountering the beast outright, or only its tail. The prejudices of which the Senator makes himself the representative to-day, permit me to say, are nothing but the tail of Slavery. Unhappily, while we have succeeded in abolishing Slavery in this District, we have not yet abolished the tail; and the tail has representatives in the Senate Chamber, as the beast once had.

We have been reminded that we are engaged in a fearful conflict. The Senator has reminded us of it. Senators nearer to me have reminded us of it. This is too true; and now, as that conflict lowers, I invoke the spirit of our fathers. They went forth to battle with the Declaration of Independence on their lips, solemnly declaring that all men are born equal, entitled

to life, liberty, and the pursuit of happiness. They introduced no discrimination of color into that sacred text, nor into the contemporary Articles of Confederation, nor into the Constitution of the United States, which was the work of their hands. I am content to be guided by their example. As they went forth to meet the enemy, they placed themselves under the protection of the God of Justice. Let us imitate them.

I had not intended to say a word on this occasion; but I could not listen to the remarks of the Senator, so harsh and unfeeling toward a whole race, belonging to the human family, like himself, without interposing a solemn protest.

Since this debate began, I have sent to the Law Library for a volume containing the authoritative words of a distinguished Southern jurist, a slaveholder, with regard to the electoral franchise. It has been a question, in what States, at the time of the adoption of the Constitution, colored persons enjoyed this franchise. I say nothing now about the more northern States; but there is a State, sometimes referred to, with regard to which there is peculiar evidence: I mean North Carolina. The enjoyment of the electoral franchise by colored persons in that State for a long time after the Constitution is not a matter of doubt. Her most eminent magistrate, the late Mr. Justice Gaston, accomplished as a jurist and as a man, whom I remember well in most agreeable personal intercourse, laid down the law of his State in emphatic words. Pronouncing the opinion of the Supreme Court of North Carolina in the case of *The State* v. *Manuel*, in 1838, he said: —

"Slaves manumitted here become freemen, and therefore, if born within North Carolina, are citizens of North Carolina;

and all free persons born within the State are born citizens of the State. . . . . The Constitution extended the elective franchise to every freeman who had arrived at the age of twenty-one and paid a public tax; *and it is a matter of universal notoriety, that, under it, free persons, without regard to color, claimed and exercised the franchise, until it was taken from free men of color a few years since by our amended Constitution.*" [1]

There is still another case, that of *The State* v. *Newsom*, which was decided in 1844, where the Supreme Court of North Carolina, after citing the opinion of Judge Gaston from which I have just read, proceeds: —

"That case underwent a very laborious investigation, both by the bar and the bench. . . . . The case was brought here by appeal, and was felt to be one of great importance in principle. It was considered with an anxiety and care worthy of the principle involved, and which gave it a controlling influence and authority on all questions of a similar character." [2]

Therefore not hastily or carelessly did the Supreme Court of North Carolina declare colored persons to be voters under the State Constitution.

Such was the constitutional law of North Carolina, fashioned by our fathers under the influence of the Declaration of Independence. Sir, I am content with that law. I do not think the Senator from Pennsylvania [Mr. COWAN], though he represents a Northern State, can mend that law from a Slave State. Nor do I think that any of us on this floor can feel humbled, if our judgment is postponed to that of Judge Gaston of North Carolina, who did not hesitate to declare posi-

[1] 4 Devereux and Battle, R., 25. [2] 5 Iredell, R., 253.

tively the constitutional law of human rights, by virtue of which colored persons are citizens. And if they are citizens, how can you deny them the electoral franchise?

I am content to leave the question here, adding, that, as I understand it, I shall deem it my duty to vote against all propositions creating any discrimination of color. At this moment of revolution, when our country needs the blessing of Almighty God and the strong arms of all her children, this is not the time for us solemnly to enact injustice. In duty to our country, and in duty to God, I plead against any such thing. We must be against Slavery in its original shape, and in all its brood of prejudice and error.

This bill was never considered again; but the question of colored suffrage in Washington reappeared.

May 24th, Mr. Wade, from the Committee on the District of Columbia, reported a joint resolution to amend the charter of the city of Washington, which was read twice and considered as in Committee of the Whole In reporting it, he said: "It relates to the registration of voters; and if it is to be passed at all, it ought to be passed immediately. I believe there is no objection to it. It alters none of the present qualifications of voters, but improves the present law as to registration, which is very defective."

May 26th, the consideration of the joint resolution was resumed, when Mr. Sumner said:—

EXAMINING this joint resolution, I find that it is entitled "A Resolution to amend the charter of the city of Washington." In that aspect it is important. Looking into it, I find the provision,—

"That, in case any person shall offer and claim the right to vote at any election held in the city of Washington, whose name is not registered, his name shall be registered by the Commissioners of Election upon the terms and conditions following."

It will be observed that the language is very broad. It is applicable to any person who shall offer and claim the right to vote at any election; and his name shall be registered upon certain specified conditions. The first condition is, that he shall take a certain oath; and if unable to understand the English language, it is further provided that the oath shall be interpreted to him: so that this clause actually contemplates that certain persons shall be registered who do not speak the English language. It then proceeds:—

"If in his answers on oath he shall state positively that he has resided in the city one year next preceding the day of said election, designating particularly the place of his residence, and that he possesses the other qualifications of an elector, and if, furthermore, some qualified elector of the city, not a candidate for any office at that election, shall take an oath before said Commissioners, which any one of them may administer, that he is well acquainted with such applicant, that he is, in fact, a resident in the city, and has been one year next previous to such election, and that he (qualified elector) has good reason to believe, and does believe, that all the statements of such applicant are true, the Commissioners shall cause his name to be registered by their clerk, and shall then receive the vote of said applicant."

Now it is at once perceived from these words, that they are directly applicable, in the first place, to any person who shall offer and claim the right to vote at an election; but, after taking the oath, he is to show residence for a certain term in the city, and also that "he possesses the other qualifications of an elector." What are "the other qualifications of an elector"? I presume, if we go back to the original charter, we shall find it is that qualification which, as I said the other

day, is the tail of Slavery, — that discrimination of color left to us, unhappily, by the former presence of Slavery in the national capital. I know not if the Committee propose to keep alive that ancient and odious discrimination; but it seems to me, that, if the language of this joint resolution be interpreted according to its natural signification, and certainly as such language is apt to be interpreted here in Washington, it must operate to the exclusion of persons not of the favored color. I know my friend from Ohio does not contemplate such exclusion; but a joint resolution to amend the charter of the city of Washington ought to be made clear, and also in that respect unobjectionable; it ought not to be the means of continuing and of extending that odious discrimination. I therefore propose to amend it by adding these words: —

"*Provided*, That there shall be no exclusion of any person from the register on account of color."

Mr. Wade was in favor of colored suffrage; but the Committee, in reporting this measure, did "not contemplate going into the question of the right of suffrage, or extending that right beyond those who are at present authorized to exercise it. It does not widen the suffrage; it does not narrow it."

Mr. Sumner began a reply to Mr. Wade.

MR. PRESIDENT, — The argument of my friend from Ohio was, that the measure now before the Senate is temporary in its character. That is inconsistent with the title of the joint resolution, which is as follows.

MR. WADE. Let me explain. I say temporary, because we all know that there is a bill fixing the right of voting, that, I suppose, is intended as a permanent law. This is temporary in that view. That is all I meant.

MR. SUMNER. That certainly will not justify my friend in his argument, for on the face of it this is permanent. It is as permanent as anything else in the existing charter. Its title is, "A Resolution to amend the charter of the city of Washington." When this is done, what assurance has my friend that anything else will be done? There is a bill on our tables. How many other bills are there on other matters which we may not reach during this session, or, if we reach, on which we cannot expect harmonious votes in the two Houses!

Here Mr. Sumner was interrupted by the Tax Bill, which was the order of the day.

May 27th, Mr. Sumner resumed.

I WAS interrupted yesterday by other business, called up while I was replying to my friend from Ohio [Mr. WADE]. I did not propose any extended reply.

It is with pain that I differ from friends. But with me there is no choice. Here is a measure which opens the whole question of suffrage in the national capital, and assumes the form of amendment to the charter of the city of Washington. It provides that certain persons shall be registered, including even those who cannot speak English; but in positive terms *it continues and keeps alive the old rule founded on color.* Now, Sir, I cannot sanction any such rule directly or indirectly.

But it is said, that, in pressing my amendment, the original proposition may be lost. This I shall regret much; for I desire its passage sincerely. But I can see no reason why a discrimination of color should be made in the bill, or in our proceedings. If white persons are kept out of their rights, so are colored persons; and I

would ask my friend from Ohio, Which has been kept out the longest? I am for the rights of both, to the end that we may have at last in the national capital *Equality before the law.*

We are shocked daily by the report of outrages upon colored persons. In Tennessee a colored woman has been murdered under the lash. Near Fortress Monroe another colored woman has been cruelly treated under the lash. This must be stopped. But I know no way so effective as to set an example of justice and humanity. If we sanction slave-hunting, if we disregard the rights of colored persons, if we treat them as inferior in condition, unhappily, Sir, there are others who will follow our example, and add a vindictive cruelty.

Therefore, insisting upon the rights of colored persons here, I insist upon their rights everywhere. Nor do I see how I can abandon their rights here without abandoning them everywhere. We are Senators of the United States, bound to consider the whole country in all its extent, and to do nothing here which shall do mischief elsewhere; nor can we yield to any local pressure, or any imagined local interests, and thus forget the cause of justice.

It is vain to say that this measure is temporary; for, in plain terms, it undertakes to amend the charter of Washington. It is vain to say, also, that there is another bill now on your calendar regulating this whole question. Who can say that this bill will become a law? Ay, Sir, who can say, that, in the hurried hours of these closing days of a weary session, the bill will even be considered again? And yet on these grounds we are asked to abandon the present assertion of the rights of colored persons. If the bill conferring these

rights can pass, so also can the present measure. If it be practical to assert these rights on one bill, it is equally practical to assert them on another, where such assertion is germane. It only remains that Senators should stand firm.

For myself, I will not sanction injustice; nor will I miss any opportunity of asserting the rights of an oppressed race. I may be alone; but, to the extent of my powers, I mean to be right.

Mr. Morrill appealed to Mr. Sumner to withdraw his opposition, saying: "Now, as a question of practical statesmanship, I submit to my honorable friend whether it is not the part of wisdom to say we will do this now and we will consider the other question when it comes up." Mr. Harlan moved to amend by adding, "who have borne arms in the military service of the United States, and have been honorably discharged therefrom." This amendment, limiting Mr. Sumner's proposition, was agreed to, — Yeas 26, Nays 12.

May 28th, Mr. Sumner spoke again, and adduced the details of the recent outrage in Tennessee, saying, in conclusion: —

We all feel, Sir, the brutality of this act. It was done by a white man on the person of a colored woman. Would he have been the author of such a brutality, had the woman been white? No; because she was black, he thus insulted human nature, and performed an act never to be read without a blush that he is a member of the human family. And how are we to discountenance such acts? Is it by keeping alive this odious discrimination of color, by imparting to it the sanction of law, by investing it with the authority of this Chamber? I appeal to you, Senators, as men of humanity, do not continue a discrimination, which, proceeding from this Chamber, must exercise a far-reaching influence. It is not simply the question of a few voters more or less in the District, but it is a question of human rights

everywhere throughout this land, involving the national character and its good name forevermore.

Again, in reply to Mr. Reverdy Johnson, Mr. Sumner said : —

BUT the Senator thinks that I am not logical, because I quote an outrage in Tennessee having its origin in the prejudice of color, and insist that here in this Chamber we shall not found legislation on a prejudice of color. Sir, I submit the question to the judgment of the Senate: Am I illogical, or is the Senator so? I insist, Sir, that you cannot sanction injustice here, especially you cannot sanction a prejudice founded on color, without quickening that prejudice, and sustaining it, wherever it now unhappily exists throughout our whole country.

At the next stage of the joint resolution, the question recurred on concurring with the amendment in Committee of the Whole : —

"*Provided*, That there shall be no exclusion of any persons from the register, on account of color, who have borne arms in the military service of the United States, and have been honorably discharged therefrom."

And it was rejected, — Yeas 18, Nays 20. The joint resolution was then passed.

And so this second battle for colored suffrage was lost.

VOTE OF BOTH HOUSES OF CONGRESS NECESSARY TO READMISSION OF REBEL STATES.

RESOLUTION IN THE SENATE, MAY 27, 1864.

THE Senate having under consideration the credentials of certain claimants as Senators from Arkansas, Mr. Sumner offered the following resolution: —

RESOLVED, That a State pretending to secede from the Union, and battling against the National Government to maintain this pretension, must be regarded as a Rebel State, subject to military occupation, and without title to representation on this floor, until it has been readmitted by a vote of both Houses of Congress; and the Senate will decline to entertain any application from any such Rebel State, until after such vote of both Houses of Congress.

June 13th, on motion of Mr. Sumner, the resolution was referred to the Committee on the Judiciary, at the same time with a joint resolution by Mr. Lane, of Kansas, recognizing the existing government of Arkansas, and also the credentials of the claimants as Senators.

June 27th, Mr. Trumbull from the Committee reported adversely on all these references.

The requirement of this resolution was affirmed by the Senate, when it adopted the amendment of Mr. Gratz Brown to the Reconstruction Bill of the House, July 1st,[1] and it became a corner-stone of Reconstruction.

[1] *Post*, Vol. IX. pp. 47, 48.

NO TAX ON BOOKS.

REMARKS IN THE SENATE, ON AMENDMENT OF THE INTERNAL REVENUE BILL, JUNE 2 AND 6, 1864.

THE Senator from New York [Mr. MORGAN] has proposed the exemption of a class of hospitals. I am in favor of his proposition. It is not now, however, under discussion. In similar spirit I move to strike out, on the one hundred and thirty-fifth page, lines two hundred and twelve, two hundred and thirteen, and two hundred and fourteen, as follows: —

"On all printed books, magazines, pamphlets, reviews, and all other similar printed publications, except newspapers, a duty of five per cent *ad valorem*."

I make one remark on this tax. We do not tax wheat or corn, because they are the staff of life. In my judgment, a tax on books is less defensible than a tax on wheat or on corn. I believe books are the staff of life; and I believe that our country would do itself honor, if at this moment, when imposing a heavy tax upon all things, it deliberately exempted books. The tax proposed is applicable to all books, — books for family reading, for the library, and also for the school. All that we can get from the tax will be very small indeed. It will not add sensibly to the Treasury, but it will impose a burden upon knowledge. I hope, therefore, that the Senate will strike the words out.

The motion was rejected.

At the next stage of the bill Mr. Sumner renewed his motion to strike out the tax on books, and then said : —

MR. PRESIDENT, — I am sorry to occupy the attention of the Senate, even for a moment, especially at this late stage of a protracted debate. But I feel that the question which I have presented is not adequately appreciated. I venture to say, that, in point of principle, few questions of equal importance have arisen on this bill.

The tax on books is peculiar, and, so far as I know, without precedent in other countries. In England paper has been taxed, but books not; here paper is to be taxed, and books too. For instance, there is to be a tax of three per cent on paper, and then five per cent additional on books, making a sum-total of eight per cent on books.

The tax of three per cent on paper seems contrary to sound policy. But the additional tax of five per cent on books is more indefensible still. I have already likened it to a tax on wheat or flour or bread, which you do not think of imposing. More than either of these is a book "the staff of life." It may be likened also to a tax on the light of day, like the English window-tax, which you do not think of imposing. Better shut out the light of day than the light of books.

The book in some cases may be a luxury, but in most cases it is a necessary, while always the handmaid of civilization. It is for all ages and all conditions, — for young and old, for rich and poor, for the family circle as well as the library, — but it is especially for the school. In all these places you will enter and demand eight per cent on every book. Every book, if it had a voice, would repel the demand.

Why not be instructed by the example of England,

when taxing everything taxable? Read the extensive list of articles taxed at the period of most searching and wide-spread taxation, and you do not find books. Read that marvellous enumeration made by the genius of Sydney Smith, and you do not find books.

"Taxes upon every article which enters into the mouth, or covers the back, or is placed under the foot; taxes upon everything which it is pleasant to see, hear, feel, smell, or taste; taxes upon warmth, light, and locomotion; taxes on everything on earth and the waters under the earth, on everything that comes from abroad or is grown at home; taxes on the raw material; taxes on every fresh value that is added to it by the industry of man; taxes on the sauce which pampers man's appetite, and the drug that restores him to health, — on the ermine which decorates the judge, and the rope which hangs the criminal, — on the poor man's salt, and the rich man's spice, — on the brass nails of the coffin, and the ribbons of the bride, — at bed or board, couchant or levant, — we must pay. The school-boy whips his taxed top; the beardless youth manages his taxed horse with a taxed bridle on a taxed road; and the dying Englishman, pouring his medicine which has paid seven per cent into a spoon that has paid fifteen per cent, flings himself back upon his chintz bed which has paid twenty-two per cent, and expires in the arms of an apothecary who has paid a license of a hundred pounds for the privilege of putting him to death. His whole property is then immediately taxed from two to ten per cent. Besides the probate, large fees are demanded for burying him in the chancel; his virtues are handed down to posterity on taxed marble; and he is then gathered to his fathers, to be taxed no more."[1]

A passage so exquisite in wit and language is sea-

[1] America; Review of Seybert's Statistical Annals: Edinburgh Review, January, 1820: Works (London, 1840), Vol. I. p. 372.

sonable here, especially when considering what shall be taxed; but I ask you to bear in mind that the English tax-gatherer never laid his hand on a book. Everything else he might touch, — a book never.

And yet in our country it is proposed to tax books. This is the land of public schools, where you boast that education, like justice, is free to all at the common cost. But a tax on books is in direct conflict with this beautiful principle. Every argument for free schools pleads also for free books, — at least for freedom from taxation. It will be a curious inconsistency to rear the school-house, often costly, where every child is welcomed without charge, and then compel him to pay a tax of eight per cent on every book he carries in his satchel.

There is one term which fitly characterizes this tax. It is a term adopted abroad, but more justly applicable to a tax on books than to any other tax: I mean *a tax on knowledge.* Such is the tax now proposed. And this tax, which cannot be named without awakening just condemnation, you are asked to make an American institution. After long struggle in England, the various *taxes on knowledge* are abandoned. I hope that our country, representative and defender of liberal ideas, will not commence a system which modern civilization has disowned.

I ask for the yeas and nays.

The motion was lost, — Yeas 8, Nays 19.

CREATION OF THE FREEDMEN'S BUREAU:

A BRIDGE FROM SLAVERY TO FREEDOM.

SPEECHES IN THE SENATE, ON BILLS AND CONFERENCE REPORTS CREATING A BUREAU OF FREEDMEN, JUNE 8, 14, 15, 1864, AND FEBRUARY 13, 21, 22, 1865.

MARCH 1, 1864, after debate on different days in February, the House of Representatives adopted a bill to establish a Bureau of Freedmen's Affairs.

March 2d, in the Senate, this bill was referred to the Committee on Slavery and Freedmen, of which Mr. Sumner was Chairman.

May 25th, Mr. Sumner reported the bill to the Senate with a substitute. The intermediate period was occupied by the Committee in a careful and laborious consideration of the whole subject, involving the question of power proper for the Bureau, whether it should be placed in the War Department or in the Treasury Department, which already had the care of abandoned lands. No less than nine different projects were laid before the Committee, some by eminent citizens interested in the freedmen, among whom were Hon. Robert Dale Owen, of Indiana, Hon. John Jay, of New York, and Edward L. Pierce, of Massachusetts. The House bill was not satisfactory. Mr. Owen said, in a letter dated March 8th, "In my judgment the bill of the House will not work."

The bill reported by Mr. Sumner was drafted by him, and adopted by the Committee. It was in ten sections, and began with these words: "That an office is hereby created in the Treasury Department, to be called the Bureau of Freedmen, meaning thereby such persons as have become free since the beginning of the present war."

June 8th, the Senate proceeded to consider the bill, when Mr. Sumner explained and vindicated it.

MR. PRESIDENT, — The Senate only a short time ago was engaged for a week considering how to open an iron way from the Atlantic to the Pacific. It is now to consider how to open a way from Slavery to Freedom.

I regret much that only thus tardily we are able to take up the bill for a Bureau of Freedmen. But I trust that nothing will interfere with its consideration. In what I have to say, I shall confine myself to a simple statement. If I differ from others, I beg to be understood it is in no spirit of controversy and with no pride of opinion. Nothing of the kind can enter justly into any such discussion.

I shall not detain the Senate to set forth the importance of this measure. All must confess it at a glance. It is clearly a charity and a duty.

By virtue of existing Acts of Congress, and also under the Proclamation of the President, large numbers of slaves have suddenly become free. These may be counted by the hundred thousand. In the progress of victory they will be counted by the million.

As they derive their freedom from the United States, under legislative or executive acts, the National Government cannot be excused from making such provisions as may be required for their immediate protection and welfare during the present *transition period.* The freedom conferred must be rendered useful, or at least saved from being a burden. Reports, official and unofficial, show the necessity of action. In some places it is a question of life and death.

It is superfluous to quote at length from these reports, while all testify alike, whether from Louisiana, South

Carolina, Fortress Monroe, Vicksburg, Tennessee, or Arkansas. I know not where the call is most urgent. It is urgent everywhere; and in some places it is the voice of distress.

Wherever our arms have prevailed, the old social system has been destroyed. Masters have fled, and slaves have assumed a new character. Released from former obligations, and often adrift in the world, they naturally look to the prevailing power. Here, for instance, is testimony which I take from an excellent report in the department of Tennessee, under date of April 29, 1863:—

"Negroes, in accordance with the Acts of Congress, free on coming within our lines, circulated much like water; the task was to care for and render useful.

"They rolled like eddies around military posts; many of the men employed in accordance with Order No. 72, district West Tennessee; women and children largely doing nothing but eating and idling, the dupes of vice and crime, the unsuspecting sources of disease."

From this statement Senators may form an idea of the numbers seeking assistance.

The question is often asked as to the disposition of those persons to labor. Here, also, the testimony is explicit. I have in my hand the answers from different stations on this point.

"QUESTION. 'What of their disposition to labor?'

"ANSWER. *Corinth.* 'So far as I have tested it, better than I expected; willing to work for money, except in waiting on the sick. One hundred and fifty hands gathered five hundred acres of cotton in less than three weeks, much of which time was bad weather. The owner admitted that it was done more quickly than it could have been done with slaves.

When detailed for service, they generally remained till honorably discharged, even when badly treated. I am well satisfied, from careful calculations, that the contrabands of this camp and district have netted the Government, over and above all their expenses, including rations, tents, &c., at least $ 3,000 per month, independent of what the women do, and all the property brought through our lines from the Rebels.'

"*Cairo.* 'Willing to labor, when they can have proper motives.'

"*Grand Junction.* 'Have manifested considerable disposition to escape labor, having had no sufficient motives to work.'

"*Holly Springs and Memphis.* 'With few exceptions, generally willing, even without pay. Paid regularly, they are much more prompt.'

"*Memphis.* 'Among men better than among women. Hold out to them the inducements, benefit to themselves and friends, essential to the industry of any race, and they would at once be diligent and industrious.'

"*Bolivar.* 'Generally good; would be improved by the idea of pay.'"

Here, also, is a glimpse at Newbern, North Carolina, under date of February 26, 1864:—

"Immediately on my return here, on the 12th of October, I instituted measures for placing the different abandoned plantations within our lines in this State under proper management and cultivation. As soon as it became known, that, as supervising Treasury agent, I had charge of this property, I was visited by hundreds (and I might correctly say thousands) of contrabands, along with numerous white persons, desiring to obtain privileges to work upon the same."

And here is the testimony of General Banks, in Louisiana:—

"Wherever in the department they have been well treated and reasonably compensated, they have invariably rendered faithful service to their employers. From many persons who manage plantations I have received the information that there is no difficulty whatever in keeping them at work, if the conditions to which I have referred are complied with."

I do not quote further, for it would simply take time. But I cannot forbear adding that the report from the Commissioners on Freedmen, appointed by the Secretary of War, accumulates ample testimony on this head, all showing that the freedmen are anxious to find employment. Your Treasury testifies to their productive power, for it contains at this moment more than a million dollars which have come from the sweat of freedmen.

It is evident, then, that the freedmen are not idlers. They desire work. But, in their helpless condition, they have not the ability to obtain it without assistance. They are alone, friendless, and uninformed. The curse of Slavery is still upon them. Somebody must take them by the hand, — not to support them, but simply to help them obtain the work which will support them. Thus far private societies in different parts of the country, at the East and the West, especially at all the principal centres, have done much toward this charity. But private societies are inadequate to the duties required. The intervention of the National Government is necessary. Without such intervention, many of those poor people, freed by our acts in the exercise of a military necessity, will be left to perish.

The service required is too vast and complex for unorganized individuals. It must proceed from the Na-

tional Government. This alone can supply the adequate machinery, and extend the proper network of assistance, with the proper unity of operation. The National Government must interfere in the case, precisely as in building the Pacific Railroad. Private charity in our country is active and generous; but it is powerless to cope with the evils arising from a wicked institution; nor can it provide a remedy, where society itself is overthrown.

There are few who will not admit that something must be done by the Government. Cold must be the heart that could turn away from this call. But whatever is done must be through some designated agency; and this brings me to another aspect of the question.

The President in his Proclamation of Emancipation has used the following language: "I recommend to them," — that is, to the freedmen, — "that in all cases, when allowed, they labor faithfully for reasonable wages." Such is the recommendation from that supreme authority which decreed Emancipation. They are to labor, and for reasonable wages. But the President does not undertake to say how this opportunity shall be obtained, — how the laborer shall be brought in connection with the land, how his rights shall be protected, and how his new-found liberty shall be made a blessing. It was enough, perhaps, on the occasion of the Proclamation, that the suggestion should be made. Faithful labor and reasonable wages: let these be secured, and everything else will follow. But how shall they be secured?

Different subjects, as they become important, are committed to special bureaus. I need only refer to Patents, Agriculture, Public Lands, Pensions, and In-

dian Affairs, — each under the charge of a separate Commissioner. Clearly, the time has come for a Bureau of Freedmen. In speaking of this agency, I mean a bureau which will be confined in operation to the affairs of freedmen, and not travel beyond this increasing class to embrace others, although of African descent. Our present necessity is to help those made free by the present war; and the term "freedmen" describes sufficiently those who have once been slaves. It is this class we propose to help during the *transition period* from Slavery to Freedom. Call it charity or duty, it is sacred as humanity.

And here a practical question arises with regard to the department in which this bureau should be placed. There are reasons for placing it in the War Department, at least during the war. There are other reasons for placing it in the Department of the Interior, which has charge of Indian Affairs, Pensions, and Patents. But, whatever the reasons on general grounds for placing it in one of these two departments, there are other reasons, of special importance at this moment, which point to the Treasury Department. Indeed, after careful consideration, the Committee were satisfied that it was so clearly associated with other interests already intrusted to this department, that it could not be advantageously administered elsewhere. Although beginning this inquiry with a conviction in favor of the War Department, I could not resist the conclusion of the Committee.

Look, for one moment, at the class of duties already imposed upon the Treasury Department in connection with the very homes of these freedmen.

Congress has, by special Acts, conferred upon the

Secretary of the Treasury extraordinary powers with regard to trade in the Rebel States. There is, first, the Act of July 13, 1861, entitled "An Act further to provide for the collection of duties on imports, and for other purposes," which declares that commercial intercourse with any State or part of a State in rebellion, when licensed by the President, "shall be conducted and carried on *only in pursuance* of rules and regulations prescribed by the Secretary of the Treasury." And it is further provided, that "the Secretary of the Treasury may appoint such officers, at places where officers of the customs are not now authorized by law, as may be needed to carry into effect such licenses, rules, and regulations." [1]

There is another Act of Congress, approved May 20, 1862, supplementary to that just named, which confers additional powers upon the Secretary of the Treasury with reference to trade with "any place in the possession or under the control of insurgents against the United States." [2]

There is also the Act of June 7, 1862, entitled "An Act for the collection of direct taxes in insurrectionary districts within the United States, and for other purposes." In this Act it is provided, (section nine,) that, where the Board of Commissioners shall be satisfied that the owners of lands "have left the same to join the Rebel forces, or otherwise to engage in and abet this Rebellion, and the same shall have been struck off to the United States at public sale, the said Commissioners shall, in the name of the United States, enter upon and take possession of the same,

[1] Acts 1861, Ch. III. Sec. 5: Statutes at Large, Vol. XII. p. 257.
[2] Acts 1861-2, Ch. LXXXI. Sec. 3: Ibid., p. 404.

and may lease the same, together or in parcels, to any person or persons who are citizens of the United States"; and (section ten) the Commissioners "shall from time to time make such temporary rules and regulations and insert such clauses in said leases as shall be just and proper to secure proper and reasonable employment and support, at wages or upon shares of the crop, of such persons and families as may be residing upon the said parcels or lots of land, which said rules and regulations are declared to be subject to the approval of the President."[1] The execution of this Act is lodged in the Treasury Department.

Then comes the Act of Congress, approved March 12, 1863, entitled "An Act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," under which the Secretary of the Treasury is authorized "to appoint a special agent or agents to receive and collect all abandoned or captured property in any State or Territory or any portion of any State or Territory of the United States, designated as in insurrection against the lawful Government of the United States." The Act proceeds with details on the subject.[2]

Such are powers conferred by Congress upon the Treasury Department concerning trade and abandoned property in the Rebel States. These were followed by a general order from the War Department, as follows: —

[1] Acts 1861-2, Ch. XCVIII.: Statutes at Large, Vol. XII. pp. 424, 425.
[2] Acts 1862-3, Ch CXX.: Ibid., pp. 820, 821.

"GENERAL ORDERS, No. 331.

"WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
"WASHINGTON, October 9, 1863.

"The President orders: —

"1. All houses, tenements, lands, and plantations, except such as may be required for military purposes, which have been or may be deserted and abandoned by insurgents within the lines of the military occupation of the United States forces in States declared by proclamation of the President to be in insurrection, will hereafter be under the supervision and control of the supervising special agents of the Treasury Department.

"2. All commanders of military departments, districts, and posts will, upon receipt of this order, surrender and turn over to the proper supervising special agent such houses, tenements, lands, and plantations, not required for military uses, as may be in their possession or under their control; and all officers of the army of the United States will at all times render to the agents appointed by the Secretary of the Treasury all such aid as may be necessary to enable them to obtain possession of such houses, tenements, lands, and plantations, and to maintain their authority over the same.

"By order of the Secretary of War.

"E. D. TOWNSEND,
"*Assistant Adjutant-General.*"

By this order, the Treasury Department is substituted for the War Department in jurisdiction over "houses, tenements, lands, and plantations deserted and abandoned by insurgents within the lines of military occupation." This is broad, but it is positive.

In pursuance of these Acts of Congress, and of this order of the War Department, the Secretary of the Treasury has proceeded to appoint special agents and to establish a code of regulations. I have in my hands a

small volume, entitled "Commercial Intercourse with and in States declared in Insurrection, and the Collection of Abandoned and Captured Property,"[1] containing the statutes and also the departmental regulations on the subject. It appears that there is already an organization under the Secretary of the Treasury, and also a system, each of reasonable completeness, to carry out these purposes.

In determining where the Bureau of Freedmen should be placed, it becomes important to consider the interests it is proposed to guard; and this brings me to another aspect of the question.

Looking at the freedmen whose welfare is in question, we find that their labor may be classified under two different heads: first, *military;* and, secondly, *predial*, or relating to farms. There are still other laborers, including especially mechanics; but these are chiefly in the towns. The large mass are included in the two classes I have named. It is, therefore, these two classes that are to be particularly considered.

1. The first class is already provided for. It appears that one hundred thousand freedmen are already engaged in the military service as soldiers or laborers. Others will continue to be engaged in this way. These are all naturally and logically under the charge of the War Department; nor do they need the superintendence of the proposed bureau. The Act of Congress equalizing their condition in the army of the United States is better for them than any bureau.

2. But there will remain the other larger class, con-

[1] Report of the Secretary of the Treasury, 1863, Paper No. 28: Executive Documents, 38th Cong. 1st Sess., H. of R., No. 3.

sisting in the main of women and children and farm laborers, who must find employment on the abandoned lands. To this labor they are accustomed. These lands are their natural home. But this class must naturally and logically come under the charge of the department which has charge of the abandoned lands. Conceding that all in the military service fall under the superintendence of the War Department, it follows with equal reason that all who labor on the lands must fall under the superintendence of the Treasury Department, so long, at least, as this department has charge of the lands.

This conclusion seems so reasonable that your Committee were not able to resist it. But the testimony of persons who have given particular attention to the question is also explicit; so that experience is in harmony with reason. I have in my hands a letter from Colonel McKaye, an eminent citizen of New York, and also a member of the Commission to inquire and report on this subject, appointed by the Secretary of War. After visiting South Carolina and Louisiana, expressly to study the necessities of freedmen, and to ascertain what could be done to benefit them, he thus expresses himself: —

"*In the first place*, everybody who has had any *practical experience* of the working of the plantations or of the superintendence of negro labor will tell you that *the control of the abandoned plantations and the care of the colored people must be in the same hands.*"

You will not fail to observe how positively this *expert* speaks. According to him, all who have had "practical experience" insist that the care of the freedmen and of

the plantations should be "in the same hands"; and so important does he regard this point that he places it first in consideration.

But Colonel McKaye is not alone. Here is a letter from Hon. Robert Dale Owen, Chairman of the Commission on Freedmen, appointed by the Secretary of War, which testifies as follows: —

"It will never do to have Treasury agents who lease the lands to white men, and War Department agents who assign the same lands to colored people. Nothing but confusion and conflict of authority can result It will not work at all. But even if it would, why employ two sets of agents to do what one set can do much better? And who is to inspect the leased plantations, and see to it that neither employers nor employed are wronged? The men who gave the leases? But they are Treasury agents, and have nothing to do with freedmen. Or the Freedmen's Commissioners? But what authority can they have over men who do not hold their leases from them? *The men who have the care of the laborer ought to have the leasing of the land and the inspection of the leases;* and they should be authorized to lease equally to white and to colored people."

Such a statement is an argument.

This conclusion has the support also of General Banks, in a letter addressed to one of the Freedmen's Commission. Here are his words: —

"The assignment of the abandoned or forfeited plantations to one department of the Government, and the protection and support of the emancipated people to another, *is a fundamental error productive of incalculable evils, and cannot be too soon or too thoroughly corrected.*"

The able and elaborate report from the Freedmen's

Commission, just published, considers this question carefully. Nothing could be more explicit than the following testimony.

"But, in the judgment of the Commission, the most serious error in connection with the present arrangements for the care and protection of these people *arises out of the assignment to a different agency of the care and disposal of the abandoned plantations.* To enter into the detail of all the evils and abuses that have arisen out of this error, and which are unavoidable so long as it continues to exist, would occupy too great a space in this report. Suffice it to say, that it is the source of the greatest confusion and a perpetual collision between the different local authorities, in which not only the emancipated population, but the Government itself, suffers the most serious injuries and losses.

. . . . .

"And this is the purport of all the testimony which the Commission has been able to obtain, not in the department of the Gulf only, but everywhere, in relation to this matter.

"The unhesitating judgment of every person, official or other, not interested in the opportunities it affords for peculation, with whom we have consulted, coincides with that of General Banks. All, without exception, declare that no system can avail to effect the great objects contemplated that does not assign to one and the same authority the care and disposal of the abandoned plantations and the care and protection of the emancipated laborers who are to cultivate them.

"*And, after the most thorough investigations, I am authorized in saying that this is the deliberate judgment of the Commission.*"[1]

It was on this ground of reason, and yielding to the

[1] Supplemental Report to the Secretary of War, by James McKaye, Special Commissioner, pp. 28, 29.

influence of such authoritative opinions, that the Committee were led to believe that there was no alternative on this practical question.

In the course of their inquiries the Committee sought the opinion of the Secretary of the Treasury. With the heavy burdens of his department resting on his shoulders, he does not desire any additional labor; but he does not conceal his conviction that the care of the freedmen must for the present be associated with the care of the lands. He would be glad to be relieved of all the responsibilities connected with the subject, but he hopes that it will not be divided between two different departments. In that event it is feared that there will be little good from either.

I have dwelt with some minuteness on this question, because it seems to be the practical point on which there may be difference of opinion. Already gentlemen have taken sides, and newspapers also. I regret this difference, but I trust that a calm and dispassionate consideration of the subject will render it innocuous. The first thought of all should be for the freedmen.

There is another point, which ought not to be passed over in silence, arising from the just desire to protect the freedmen from any system of serfdom or enforced apprenticeship. It is well known that among former slave-masters there are many who continue to count upon appropriating the labor of their slaves, if not under the name of Slavery, at least under some other system by which freedmen shall be effectually held to service. This very phrase "held to service," standing alone, is the pleonastic definition of Slavery itself. One of these slave-masters, in a public speech,

said: "There is really no difference, in my opinion, whether we hold them as absolute slaves or obtain their labor by some other method. Of course we prefer the old method; but that question is not now before us."[1] Such barefaced avowals were not needed to put humane men on their guard against the conspiracy to continue Slavery under another name.

The bill before the Senate provides against any such possibility by requiring that the assistant commissioners and local superintendents shall not only aid the freedmen in the adjustment of their wages, but shall take care that they do not suffer from ill-treatment or any failure of contract on the part of others, — and also that the contracts for service shall be limited to a year. The latter provision is so important that I give it precisely.

"*Provided*, That no freedmen shall be held to service on any estate above mentioned otherwise than according to voluntary contract, reduced to writing, and certified by the assistant commissioner or local superintendent; nor shall any such contract be for a longer period than twelve months."

Here is a safeguard against serfdom or enforced apprenticeship which seemed to the Committee of especial value. In this respect the House bill was thought to be fatally defective, inasmuch as it interposed no positive safeguards.

I do not know how extensive the desire may be to set Slavery again on its feet under another name. But when we take into consideration the selfish tendencies of business, the disposition of the strong to appro-

[1] Speech of Judge Humphrey, at a Union meeting at Huntsville, Alabama: McKaye's Supplemental Report, p. 23.

priate the labor of the weak, and the reluctance of slave-masters to renounce habitual power, I have felt that Congress would fail in its duty, if it did not by special provision guard against any such outrage. There must be no Slavery under an *alias*. This infinite wrong must not be allowed to skulk in serfdom or compulsory labor. "Once free, always free," — such is the maxim of justice and jurisprudence. But any system by which the freedmen may be annexed to the soil, like the old *adscripti glebæ*, will be in direct conflict with their newly acquired rights. They can be properly bound only by contract; and considering how easily they may be induced to enter into engagements ignorantly or heedlessly, and thus become the legal victims of designing men, it is evident that no precautions in their behalf can be too great.

It is well known that in some of the British West Indies an attempt was made, at the period of emancipation, to establish a system of apprenticeship, which should be an intermediate condition between Slavery and Freedom. But the experiment failed. In some of the islands it was abandoned by the planters themselves, who frankly accepted emancipation outright; and in all it finally fell before the irresistible eloquence of Brougham. Here is a passage from one of his speeches.

"They who always dreaded Emancipation, who were alarmed at the prospect of negro indolence, who stood aghast at the vision of negro rebellion, should the chains cease to rattle or the lash to resound through the air, gathering no wisdom from the past, still persist in affrighting themselves and scaring you with imaginary apprehensions from the transition to entire freedom out of the present intermediate

state. But that intermediate state is the very source of all their real danger; and I disguise not its magnitude from myself. You have gone too far, if you stop here and go no farther; *you are in imminent hazard, if, having loosened the fetters, you do not strike them off*, — if, leaving them ineffectual to restrain, you let them remain to gall and to irritate and to goad. Beware of that state, yet more unnatural than slavery itself, *liberty bestowed by halves.*

. . . . .

"I have demonstrated to you that everything is ordered, every previous step taken, all safe, by experience shown to be safe, for the long desired consummation. The time has come, the trial has been made, the hour is striking; you have no longer a pretext for hesitation or faltering or delay. The slave has shown, by four years' blameless behavior and devotion to the pursuits of peaceful industry, that he is as fit for his freedom as any English peasant, ay, or any lord whom I now address. I demand his rights, — *I demand his liberty without stint*, — in the name of justice and of law, in the name of reason, in the name of God, who has given you no right to work injustice."[1]

But surely there is no need of eloquence or persuasion to induce you to set your faces like flint against any such half-way system. Freedom already declared must be secured completely, so that it may not fail through any pretension or fraud of wicked men. The least that can be done is what is proposed by your Committee.

Much more might be said on the whole subject; but I forbear. I have opened to consideration the two principal questions. If the Senate agree with the Committee, first, on the importance of keeping the superintendence

[1] Speech in the House of Lords on the Immediate Emancipation of the Negro Apprentices, February 20, 1838; Works (London and Glasgow, 1857), Vol. X. pp. 276-279.

of the freedmen and of lands in the same hands, so as to avoid local conflict and discord, and, secondly, in the importance of providing surely against any system of serfdom or adscription to the soil, the bill of the Committee must be adopted.

For the sake of plainness, I ask attention to the general character of the bill in its main features.

1. It provides exclusively for freedmen, meaning thereby "such persons as have once been slaves," without undertaking to embrace persons generally of African descent.

2. It seeks to secure for such freedmen the opportunity of labor on those lands which are natural and congenial to them, and on this account it places superintendence of the freedmen in a department having superintendence of the lands.

3. It provides positively against any system of enforced labor or apprenticeship, by requiring contracts between the freedmen and their employers to be carefully attested before local officers.

4. It establishes careful machinery for the purposes of the bill, both as regards freedmen and as regards lands.

But the bill is seen not only in what it does, but also in what it avoids doing.

It does not undertake too much. It does not assume to provide ways and means for the support of the freedmen; but it does look to securing them the opportunities of labor according to well-guarded contracts and under the friendly advice of agents of the Government, who will take care that they are protected from abuse of all kinds.

It is the declared duty of the agents "to protect

these persons in the enjoyment of their rights, to promote their welfare, and to secure to them and their posterity the blessings of liberty." Under these comprehensive words all that is proper and constitutional is authorized for their welfare and security, while labor is made to go hand in hand. Thus far in the sad history of this people labor has been compelled by Slavery. But the case at last will be reversed. It is Liberty that will conduct the freedman to the fields, protect him in his toil, and secure to him all its fruits.

In closing what I have to say on this subject, allow me to read the official testimony of the Commission on Freedmen, appointed by the Secretary of War, in their recent report.

"For a time we need a Freedmen's Bureau, — but not because these people are negroes, only because they are men who have been for generations despoiled of their rights. The Commission has heretofore — to wit, in the Supplemental Report made to you in December last — recommended the establishment of such a bureau; and they believe that all that is essential to its proper organization is contained, substantially, in a bill to that effect, reported, on April 12, from the Senate Committee on Slavery and Freedmen."[1]

This is the bill before us.

It is for the Senate to determine, under the circumstances, what it will do. My earnest hope is that it will do something. The opportunity must not be lost of helping so many persons now helpless, and of aiding the cause of reconciliation, without which peace cannot be assured. In this spirit I leave the whole subject to

[1] Final Report of the American Freedmen's Inquiry Commission: Senate Documents, 38th Cong. 1st Sess., No. 53, p. 109.

the judgment of the Senate. If anything better than the work of the Committee can be found, I hope it will be adopted; meanwhile I ask you to accept what is now offered.

After various amendments moved by Mr. Sumner, the bill was violently opposed by Mr. Richardson, of Illinois. In the course of his speech the following colloquy occurred.

MR. RICHARDSON. The Senator from Massachusetts will be able to carry his proposition next winter, if the people can be deceived to reëlect Lincoln.

MR. SUMNER. I hope this summer.

MR. RICHARDSON. You have no show in the world this summer. If you could carry that proposition now, you could not carry one of the Northwestern States this fall.

June 14th, the consideration of the bill was renewed, when Mr. Hendricks, of Indiana, spoke against it. He moved to strike out "Treasury Department," and insert "Department of the Interior." On this motion Mr. Sumner said: —

THE point to which the Senator directs attention was considered very carefully by the Committee. Were this a moment of peace, I believe the Committee would have been unanimous in the idea of the Senator. Indeed, it seems to me, the reasons for it in time of peace are unanswerable. It is in the Interior Department that we place the Bureau of Indian Affairs, the Bureau of Pensions, the Bureau of Patents, the Bureau of Public Lands; and a Bureau of Freedmen would be more or less germane to all these interests. It would naturally be lodged in the same department with them. Naturally it belongs to the Interior; there can be no question about it. The Senator, therefore, is perfectly right, when he makes the suggestion. But the Senator should take into consideration that at this moment we are acting provisionally, and not permanently, — under sugges-

tions growing out of the present state of the country, and not as if we were in a condition of permanent peace.

In placing the bureau where the Committee have placed it, they followed what seemed the necessities of the case. Congress, by previous legislation, has practically placed the bureau in the Treasury Department, — or rather it has rendered it necessary that it should be placed there, unless we are willing by legislation to create a conflict between two different departments. Congress has already placed in the Treasury Department the control of the business relations between the Rebel States and the Loyal States, and also the control of the abandoned lands and plantations in the Rebel States. Now, as I tried to exhibit the other day, when I opened this question, the main interest for the moment is how to bring the freedmen in connection with the lands. If you go beyond that, if you undertake to provide means for their support, you assume what I believe the country does not expect you to assume, and what I believe those who have the welfare of that people most at heart do not venture to counsel. We desire to secure for them opportunity, — opportunity to work: that is the main point, and that can be secured only by bringing them in connection with the lands. The care and guardianship of the lands where it is proposed to place the freedmen have already, by previous legislation, I repeat, been lodged with the Treasury Department. Therefore, naturally and logically, it seems to follow, unless you are willing to create a conflict between two different departments, or between the agents of two different departments, that you should place the care of the freedmen in the same department.

Sir, I am not alone in this view. The other day I presented it, and gave opinions on the subject, to which I now call attention: one is a private letter from Hon. Robert Dale Owen, and the other is part of the Report of the Freedmen's Commission, appointed by the Secretary of War to consider, among other questions, that now before the Senate.[1]

The amendment of Mr. Hendricks was rejected. Mr. Willey, of West Virginia, then spoke against the bill. He said: "In my opinion, after as close and careful an examination of this bill as I have been able to give to it, its proper title would be 'A bill to reënslave freedmen.' . . . . Sir, in the name of Liberty and Emancipation I protest against the passage of any such bill by the American Senate."

June 15th, the debate was continued, when the bill was opposed by Mr. Saulsbury, of Delaware, Mr. Hicks, of Maryland, and Mr. Grimes, of Iowa. Mr. Ten Eyck, of New Jersey, spoke in favor of it. Mr. Carlile, of Virginia, moved to postpone its further consideration to the first Monday of December next, which was lost, — Yeas 13, Nays 23. Mr. Grimes was particularly severe in his criticism, which drew from Mr. Sumner the following reply.

I AM sorry that I am obliged to say another word in this debate. I had hoped to be excused. But the remarks of the Senator from Iowa [Mr. GRIMES] leave me no alternative.

I am not astonished at the opposition this bill has encountered from Senators over the way. It is their vocation to oppose every such measure, and to give it, if possible, a bad name. They believe in Slavery more or less, and will not do anything to remove it or to mitigate its terrible curse. There is the Senator from West Virginia [Mr. WILLEY], who gives us smooth words for Freedom, with boasts of the slaves he has emancipated, and then straightway, by voice and vote, sustains slave-

[1] See, *ante*, pp. 487, 488.

hunting, and, if possible, worse still, startles the Senate by a menace that slaves set free by Act of Congress will be reënslaved by States restored to the Union. That this Senator should attack a bill for a Bureau of Freedmen is perfectly natural; nor am I astonished that he should misrepresent its character. But I cannot conceal my surprise at the course of the Senator from Iowa, who I know has no love for Slavery, and no congenital, persistent, and rooted prejudices against the colored race. If the Senator from West Virginia spoke naturally, allow me to say that my friend from Iowa spoke unnaturally.

Sir, the Senator has not done justice to the bill he undertook to criticize. It was evident that he spoke hastily, without having even read it. At least, this is not an improper assumption, when we consider some of his criticisms. It will be remembered how promptly I corrected him, while he was picturing the Assistant Commissioners as so utterly without restraint that they were not even obliged to make reports. I rose and read the clause in the bill expressly requiring not only "quarterly reports," but "other special reports from time to time." The Senator, surprised by this provision, replied, that it was at the close of the bill, and was evidently an afterthought. This, again, was a mistake. Had he read the bill carefully, he would have found, that, whatever its merits in other respects, everything is introduced in its proper place, and this provision is no exception. There is no afterthought in the bill. The Senator then complained that the Assistant Commissioner was not obliged to give a bond. Here, again, he was mistaken. By an amendment moved by myself this was required. All this was part of the attempt to

show that the bureau had not been planned with sufficient care. Suffice it to say that there is no bureau of the Government constituted with more care, or surrounded with more safeguards against abuse. Much, in the last resort, must be confided to the honesty of public servants; but in the present case they are all placed under the observation of their superiors. Superintendents will be observed by the Assistant Commissioner, who will be observed by the Commissioner, and all will be under the observation of the Secretary of the Treasury, who himself is under the observation of the President; and I need not add that the whole will be subject to the oversight of a humane and enlightened people, awakening daily to a sense of obligation which cannot be postponed.

I am not wrong, then, when I say that the Senator did injustice to the bill in his criticism on its structure and the machinery it establishes. But this was the smallest part of his injustice. He went further, and, following the Senator from West Virginia, asserted that it gave the Commissioner unlimited power and control, so as to hand the unhappy freedman over to Slavery under another name. I looked at the Senator to see if he were really serious, as he made this strange accusation against a measure conceived in a sentiment of humanity and equity, and, by positive provisions, guarding every freedman against the very outrage which the Senator professes to fear. He seemed to be serious, as he repeated the accusation. But as he had erred with regard to the restraints upon the Assistant Commissioners, so he erred in the graver impeachment which he launched here.

The Senator began by saying that the bill, according

to its definition of freedmen, was applicable to all "once slaves," and that even Robert Small, the patriot slave who navigated the "Planter" out of Charleston and gave it to us, would come under its provisions. Very well. Suppose he does. Can he suffer from it? Does he lose anything by it? Can anybody under this bill exercise any power or control over Robert Small? The Senator forgets that the bill assumes that all are free, and in every respect entitled to all the privileges of freemen, — that they are invested with every right the Senator himself possesses, and, if these rights are violated, they may look for a remedy to any court of justice precisely as he could. None of these rights are infringed. On the contrary, the officers under the bill are charged to see that the freedmen are secure in their rights; so that Robert Small himself, if the occasion required, might find aid and protection under it. The bill gives no power to take away or limit existing rights; but it provides additional means for their safeguard, that emancipation may be perfect, so far as possible.

I do not like to take time, especially when I consider that in opening this matter to the Senate I explained the character of the bill and its necessity. I do not pretend that it is perfect; but I beg to assure the Senate that it is the result of the careful deliberations of the Committee. If Senators are disposed to criticize it, or to offer amendments with a view to its improvement, let them do so. But I trust that they will not allow themselves to be carried into any general hostility founded on misconception of its real character. I might remind them again of the large numbers of freedmen — free, thank God, by legislative and executive acts of the United States, but not yet introduced into the new

condition appointed for them — unemployed, suffering, starving, and, with a voice of agony, calling for relief. I might remind them of the inability of private charity, or any effort organized by private individuals, to meet all the exigencies of this unprecedented case, although the generosity of our people is overflowing. I might dwell on the obligation of the nation, reaching everywhere with its hundred arms, to do what inferior charity must fail to do; and I might especially show that it is not enough to strike down the master, but that you must go further, and lift up the slave. But I forbear, contenting myself with reminding you, that, if you oppose legislation to help the freedmen in their rough passage from Slavery to Freedom, you hand over this unhappy people — unhappy for long generations, and not yet conducted into the full enjoyment of their rights — to a condition which I dread to contemplate. They look about and find no home. They seek occupation, but it is not within their reach. They ask for protection, sometimes against former taskmasters, and sometimes against other selfish men. If these are not supplied in some way by the Government, I know not where to look for them. Surely, Sir, you will not hesitate to provide, so far as you can, carefully and wisely, the proper means to secure employment for them during the transition from one condition to another, and, above all, to throw over them everywhere the ægis of Constitution and Law. And such, permit me to say, is the single supreme object of the present bill, which has been so cordially misrepresented by the Senator from West Virginia, and so strangely misrepresented by my friend from Iowa.

I have said that the object was care and protection

for persons actually free, and so regarded, who, from the peculiarity of their condition, might not be able in all respects to secure these without assistance. To this end a central agency is proposed at Washington, with subordinate agencies where the freedmen are to be found, devoted to this work of watching over emancipation, so that it may be surrounded with a congenial atmosphere. Is not the object worthy of support? Who will question it?

The language of the bill describing the functions of the Commissioner is plain and explicit; and yet out of this language, so guarded and so utterly inoffensive, the Senator from Iowa has conjured a phantom to frighten the Senate from its propriety. Why, Sir, if there were anything which by possibility could justify the fears of the Senator, if there were anything which even the most lively imagination could exaggerate into a lack of care and protection, then I should be the first to denounce it, and to ask forgiveness for an unconscious aberration. But there is absolutely nothing; and if you listen to the bill, you will agree with me.

I begin with the very words which to the Senator from Iowa were so alarming: —

"The Commissioner, under the direction of the Secretary of the Treasury, shall have the general superintendence of all freedmen throughout the several departments."

Here are duties imposed upon the Commissioner; but there is no power or control over the freedmen. Calling a man superintendent gives him no power except in conformity with law; but all the laws, general and special, are for Freedom. And yet the Senator has repeated, again and again, that this was a grant of unlimited

power and control over the freedmen. To his mind here was an overflowing fountain of tyranny and wrong.

MR. GRIMES. Will the Senator tell the Senate what is meant by it?

MR. SUMNER. With great pleasure; and if I can have the candid attention of my friend, I believe that he and I cannot differ, for I will not doubt that we have the same object at heart. Obviously the language indicates in a general way the character of the duties to be performed. They are duties of superintendence, but we are to look elsewhere for the extent of the duties; and the words which follow in the same section show something of their nature. Thus: —

"And it shall be his duty especially *to watch over* the execution of all laws, proclamations, and military orders of emancipation, or in any way concerning freedmen."

There, Sir, is the first glimpse of this tyrant. Mark, Sir, there is not one word of power or control over the freedmen, but duties solemnly imposed, all in behalf of Freedom. What next?

"And generally, by careful regulations in the spirit of the Constitution, *to protect these persons in the enjoyment of their rights*, to promote their welfare, and to secure to them and their posterity the blessings of liberty."

Here, again, are duties of the Commissioner; but there is not one word conferring power or control over the freedmen. The main object is protection in the enjoyment of their rights, — inborn, but new-found. This is to be crowned by such watchfulness as will promote their welfare and secure to them and their posterity the blessings of liberty; and all this is to be ac-

ject is good. What other word would the Senator employ to designate it? How would he describe the humane function of the Commissioner? He is versed in language. Will he supply any term more apt? I invite him to do it, and shall gladly accept it. Since we seem to concur in the object, let there be no difference on account of words. All I desire is something that shall supply help and protection. For this I cheerfully sacrifice the rest. And permit me to say, I have misread this bill, if there is a single word in it, from beginning to end, which can give the most remote apology for any other idea.

I have thus far only glanced at a single section. Look further. I pass for the moment the next section, and go to the sixth, which describes some of the duties of the "Assistant Commissioners and local superintendents." It begins by declaring that they —

"Shall act as *advisory guardians to aid* the freedmen in the adjustment of their wages, or, where they have rented plantations or small holdings, in the application of their labor."

Observe, if you please, the friendly service to be performed. Not in this way do tyrants or slave-masters wield a wicked power. Here is advice, guardianship, and the adjustment of wages, — all inconsistent with Slavery in any of its pretensions. What next?

"That they shall take care that the freedmen do not suffer from ill-treatment or any failure of contract on the part of others, and that on their part they perform their duty under any contract entered into by them."

Mark, again, the friendly service. Here is another duty cast upon these officers.

MR. GRIMES. How is that to be enforced? Suppose they will not work, — will not fulfil their contracts?

MR. SUMNER. The duty of these officers is "advisory." They are not invested with power to enforce any provisions, unless by court of law or some other tribunal. The freedmen are entitled to all the rights of freemen, just as much as the Senator. Curiously, the Senator does not seem to have purged his mind of the idea that these men, in some way or other, have not yet ceased to be slaves, —

MR. GRIMES. No.

— an assumption which, however natural in the Senator from West Virginia, is not natural in my friend from Iowa. Let him recognize them as free, like himself, and he will see that there is no remedy open to him which is not open to them, and that any outrage upon them is, in point of law, the same as if inflicted upon himself.

MR. HARLAN. I desire to ask the Senator if there are courts of law in existence in these Rebel States before whom the parties may appear.

MR. SUMNER. I am afraid that courts of justice in those States are not yet in perfect operation. But such as they are, they will be open to every freedman. On this point there can be no question.

The next words show what shall be done by these officers to promote the administration of justice: —

"They shall further do what they can as *arbitrators* to reconcile and settle any differences in which freedmen may be involved, whether among themselves or between themselves and other persons."

Here is the duty of arbitrator and peacemaker, but no power or control. And this duty is applicable to differences of all kinds, where the freedmen are parties. Nothing can be more humane or less tyrannical. This is not all.

"In case such differences are carried before any tribunal, civil or military, they shall appear as next friends of the freedmen, so far as to see that the case is fairly stated and heard. And in all such proceedings there shall be no disability or exclusion on account of color."

If not "arbitrators," then the officers are to be "next friends," to aid the freedmen in any litigation into which they may be drawn. Very little tyranny here. And this service is to be rendered in any tribunal, "civil or military"; so that, where the civil courts are closed, the freedmen may obtain justice in any military tribunal. But whether in a civil or military tribunal, there is to be no disability or exclusion on account of color. When we consider how this disability and exclusion have been the badge of Slavery and its pretensions, we may find in their positive prohibition a new token of the spirit in which this bill is conceived. Very little tyranny here.

MR. GRIMES. But, Mr. President, the case that was put by me was not where there was a controversy between the colored man and some third party, but where the Commissioner attempted to enforce the obligation of duty upon the colored man. . . . . Now I want to know of the Senator if a Commissioner who undertakes to carry out the provisions of this bill may not, under the third section, avail himself of the military authority that may be in the department to enforce obedience, — and if he thinks it would be doing justice to the colored men in the department to leave them to the

military control of the Commissioner, of whom we know nothing, and about whom we do not know whether he sympathises with the colored man or not. Is it right to leave these colored men to the military control of this Commissioner in order to enforce the obligation to labor?

MR. SUMNER. The Senator calls attention to another section, where it is provided that "the military commander within any department shall, on the application of the Assistant Commissioner thereof, supply all needful military support in the discharge of the duties of such Assistant Commissioner"; and he inquires if this does not authorize the Assistant Commissioner to use military power in making freedmen work. Let me say at once that the criticism of the Senator is absolutely novel. If the clause to which he refers could be employed to any such purpose, I beg to assure him it was not anticipated by the Committee. It was intended for a very different purpose, and in the interest of the freedman. Here, again, I remind the Senator that nothing can be done by any officer, military or civil, toward a freedman, which cannot be done toward any other citizen. If this military power can be used against one, it can be equally used against the other. The occasion for this power seemed obvious. It was supposed that in the Rebel States there might be exposed districts where the plantations would be subject to incursion or ravage from the enemy, by which labor would be obstructed or disturbed, unless military protection were at hand. To remedy evils of that character this provision was introduced. Such is the object sought to be accomplished. It is protection, in the spirit of the whole bill, and nothing else. If by any possibility there can be the chance of an abuse of this pow-

er, beyond what is incident to every trust, I shall be glad to take advantage of the criticism of the Senator, and amend the bill so that the evil he snuffs afar shall not be permitted to arrive.

The Senator cannot bear the thought of freedmen exposed to the tyranny of military power. But does he not forget that at this moment they are subject to this tyranny? It is to remove them from all this arbitrary control and uncertain protection that we establish a bureau, which shall be an agency of the civil power, charged to surround the freedmen with every safeguard the Constitution and laws can supply. Show me any provision in one or the other for the protection of human rights, and I claim it at once for the freedman against any oppressor, whatever his office or name.

Let the Senator bear these things in mind, and give us the advantage of his counsels. I shall welcome from him any suggestion, any proposition, any criticism, calculated to promote the object of the bill. The more he makes, the better. Let him be no niggard. But I trust he will pardon me, if I complain of inconsiderate assault, which, as it seems to me, can have no other effect than to injure the cause.

I have not done with the criticism of the Senator. It was on the fifth section, concerning the labor on abandoned plantations, that he bent his chief force. In the provisions of that section he found a new system of Slavery: sometimes it was Slavery outright, and sometimes it was Peon Slavery. Senators who did me the honor of listening to my remarks at the beginning of this debate will remember how I dwelt upon the importance of guarding against any revival of Slavery under any other name, whether of apprenticeship or

adscription to the soil; and they may remember, perhaps, how I explained the impossibility of any such occurrence under the present bill, and showed that the freedman was guarded at all points. And yet, in the face of this exposition, and of the positive text, — better than any exposition, — the cry is sounded, that the liberty of the freedman is in danger. The Senator read this section at length, and then sounded again particular clauses and phrases, striving to interpret them for Slavery. I will not read it at length; nor will I dwell on the first part of the section. Suffice it to say, that, so far as it describes the lands to be taken for occupation, it follows substantially the text of the order from the War Department, by which "all houses, tenements, lands, and plantations, except such as may be required for military purposes, which have been or may be deserted and abandoned by insurgents within the lines of the military occupation," are placed under the supervision and control of the supervising special agents of the Treasury Department. Under this order the Secretary of the Treasury has been acting for several months, — doing with these lands precisely what the Senator so vehemently condemns. The present bill, so far as concerns the power of the Commissioner over the lands, does little more than reduce the order of the War Department to the text of a statute, thus imparting to it a certain legality which it does not now possess.

Passing from the lands to be occupied under the bill, the Senator next pictures the terrible fate of the freedmen laboring on these lands in pursuance of careful contracts. There seems no limit to the Senator's anxiety lest they should be bound in Slavery. I welcome his generous solicitude. But I pray that he will not allow

it to mislead his judgment or prevent him from seeing the case in its true character. Surely he must be unduly excited, or he could not find danger in these words: —

"In case no proper lessees can be found, then to cause the same to be cultivated or occupied by the freedmen, on such terms, in either case, and under such regulations, as the Commissioner may determine."

"What a frightful power!" exclaimed the Senator. But why? Here is no power or control over the freedmen, but simply over the lands, which the officers cause to be cultivated or occupied. These officers are representatives of the National Government, to which the lands belong for the time being, and, in determining the terms and regulations under which they are to be cultivated or occupied, they do no more than is done by the Senator with regard to the lands he is so happy in owning. The Senator fixes the terms and regulations under which his lands are leased or cultivated: does he not? And he would be surprised, if any person called in question his rights in this regard; especially would he be surprised, if any person undertook to infer that the freedom of laborers upon his lands could be compromised by any terms or regulations he might choose to make. But there is no power he may exercise over his own lands that may not now be exercised by the Government. In each case the laborer must be treated as a freeman. The Senator seems to imagine that there is power or control over the freedmen conferred by these words. Here is his mistake. The power and control are over the lands, not over the freedmen. There is not a word in the clause that can be tortured into any such idea. I challenge the Senator to point it out.

Thus far I have considered this clause, which according to the Senator is so terribly pregnant, without alluding to the express limitation following in the same section. Even without this limitation it is clear and blameless. But the Committee, in order to make assurance doubly sure, and to set up an absolute impediment against any abuse, have added the following proviso: —

"*Provided*, That no freedmen shall be held to service on any estate above mentioned otherwise than according to voluntary contract, reduced to writing, and certified by the Assistant Commissioner or local superintendent; nor shall any such contract be for a longer period than twelve months."

And yet, in the face of this proviso, the Senator sees danger. Nobody can be found on the lands except in pursuance of voluntary contract, which must be reduced to writing and certified by an officer of the Government. Nor is this all. The contract is not to be for a term beyond twelve months; so that, by no excuse, and by no exercise of power, can the freedman be put even under a shadow of control beyond this brief term. He is in all respects a freeman, laboring on lands according to careful contract for a limited period. And yet the Senator calls this beneficent arrangement Slavery, and then, changing the name, he calls it Peonage. Sir, the Senator has an imperfect conception of that peonage which is indefinite service, or of that slavery which is service for endless generations, if he undertakes to liken employment in pursuance of contract most carefully guarded for a term of a few months to either of these wretched conditions.

But all this is only part of the mistake in which the

Senator has proceeded from beginning to end. I am at a loss to account for it. I do not understand it. That I regret it most sincerely I need not say. I counted upon his charitable regard for this bill. I felt sure of his sympathy with its general objects. I do not renounce the hope of this sympathy now. But I cannot forbear saying, that, to my mind, the Senator throws himself in the way of a humane undertaking, and practically abandons the claims of the oppressed race to which he and I both owe service. Long have they suffered, much have they been abused, wearily have they journeyed through life; and now, at last, when Slavery is overturned, and we seek to provide a passage from its torments to a better condition, where labor shall be quickened and protected by Liberty, and where all rights shall be respected, it is hard to find our efforts buffeted by a cross-wind from such an unexpected quarter.

Mr. Grimes and Mr. Willey followed. Between the latter and Mr. Sumner there was an earnest passage.

June 27th, the consideration of the bill was again resumed, when other amendments moved by Mr. Sumner were adopted, among which was the following: —

"And every such freedman shall be treated in every respect as a freeman, with all proper remedies in courts of justice; and no power or control shall be exercised with regard to him, except in conformity with law."

Several Senators spoke.

June 28th, Mr. Wilson, of Massachusetts, moved to strike out "Treasury" and insert "War." Mr. Sumner again explained the preference of the Committee at length, when Mr. Wilson withdrew his motion; but it was afterwards renewed by Mr. Reverdy Johnson, of Maryland, and rejected, — Yeas 15, Nays 20. Other motions ensued, with speeches. The substitute of the Committee having been adopted, the bill was then passed, — Yeas 21, Nays 9, — with the title, "An Act to establish a Bureau of Freedmen."

July 2d, in the House of Representatives, Mr. Eliot, from the Select Committee on Emancipation, moved that the House should not concur with the substitute of the Senate, when, on motion of Mr. Griswold, the whole subject was postponed to December 20th.

December 20, 1864, in the House of Representatives, the bill being under consideration, according to the postponement from the last session, Mr. Eliot, of Massachusetts, Mr. Kelley, of Pennsylvania, and Mr. Noble, of Ohio, were appointed a Committee of Conference. The Senate agreed to the Conference, and Mr. Sumner, Mr. Howard, of Michigan, and Mr. Buckalew, of Pennsylvania, were appointed on the part of the Senate. A new bill was reported. Instead of attaching the bureau to the War Department or to the Treasury Department, an independent department was created, called a Department of Freedmen and Abandoned Lands; but in other respects it was substantially the Senate bill.

February 9, 1865, after debate, the report of the Committee was adopted by the House, — Yeas 64, Nays 62.

February 10th, Mr. Sumner, on the part of the Committee, reported the new bill to the Senate, and on the 13th, in answer to inquiry, explained it as follows.

Mr. PRESIDENT, — I trust that there will be no opposition to this most important, and, as I solemnly believe, most beneficent measure. But I shall be happy to make any explanation with regard to it.

Senators have not forgotten the bill to create a Bureau of Freedmen, which, after careful debate for several days, was passed by the Senate at the close of the last session as a substitute for a House bill. For some time the difference between the two Houses has been under the consideration of a Conference Committee; whose report is now before you. This report embodies substantially the Senate bill, including various propositions moved by different Senators, — among others, that relating to the forfeiture of estates, moved by the Senator from Illinois, [Mr. TRUMBULL], — that relating to the care of freedmen unemployed on the

lands, moved by the Senator from West Virginia [Mr. WILLEY], — and that relating to trials by courts-martial, moved by the Senator from Wisconsin [Mr. DOOLITTLE]. All of the Senate bill, in substance, and generally in language, is preserved, with one single exception. By the Senate bill a bureau was created in the Treasury. The Committee of the two Houses unite in recommending a separate department, holding directly under the President, and therefore free from the control of either the Treasury or the War.

In point of fact, the only substantial difference between the two Houses was on the place where the bureau should be. Each was for a bureau; but one was for it in the Treasury, and the other was for it in the Department of War; and there were strong arguments in favor of each. There were also strong feelings against each. Sometimes it was compendiously said that the freedmen could not be trusted to "the harpies of the Treasury"; and then again it was said, with equal point, that they could not be trusted to "the bloodhounds of the War." These were exaggerations of opposite opinions; but they serve to disclose the irreconcilable discord on the subject.

If the freedmen could have been provided for without reference to the lands, the question would have been relieved from much of its embarrassment. But it was the conviction of the Committee, in which they were sustained by all most familiar with the matter, that the care of the freedmen and the care of the abandoned lands ought to be in the same hands, and that they could not be separated without exposing the freedmen to the mischiefs of two conflicting jurisdictions. But the War Office was not adapted to manage the lands,

as many insisted that the Treasury was not adapted to manage the freedmen.

There was another consideration not without influence. It was felt that each of these great departments of the Government was already so severely burdened, so weighed down with manifold duties, that it was hardly in condition to assume a new trust, so grave and onerous as that proposed.

For such reasons, Sir, and yielding to such influences, the Committee, after careful and conscientious deliberation, determined to recommend a new department, not unlike that of Agriculture, which should not be subject either to the Treasury or to the War. It was felt that in doing this they were doing the best for the cause, and they were not insensible also to the consideration that in this way they might secure a higher order of talent and of character for the service. Men fitted for Treasury agents or fitted for War might not always be the best for the care of freedmen. The man for this humane service should be humane by nature, and should sympathize especially with the race so long neglected and outraged. They must be versed, if I may so express myself, in the humanities of the subject.

After quoting the testimony of experts in favor of an independent department, and of changing the actual system, he concluded.

Such is the system that now exists, under which the freedman is the mere accident of the Treasury. Sir, it is unworthy of the Republic at this great period of our history.

Already the President, by irrepealable proclamation, has declared all slaves free. An Amendment to the Constitution will, in the course of a few weeks, place

their freedom under the sanction of Constitutional Law. But this is not enough. The debt of justice will not be paid, if we do not take them by the hand in their passage from the house of bondage to the house of freedom: and this is what is proposed by the present measure. The temporary care of the freedman is the complement of Emancipation; but the general welfare is involved in the performance of this duty. Without it Emancipation may for a while seem at fault, and the general welfare gravely suffer.

February 14th and 21st, the consideration of the report was continued, — Mr. Davis, of Kentucky, Mr. Hendricks, Mr. Grimes, and Mr. Sprague, of Rhode Island, speaking against it. In reply to Mr. Grimes, who moved the postponement of its consideration, Mr. Sumner again vindicated the measure.

I HOPE there will be no postponement. A motion to postpone at the present time is a motion to kill, and such is the unquestionable object of the Senator from Iowa [Mr. GRIMES]. He is against the bill now, just as he was at the beginning, and is acting according to his sense of duty, when he tries in every way to defeat it. But are Senators whose votes have thus far shown a determination to do something for the freedmen ready to follow his example?

The Senator says he wishes time. Well. But he wishes something more. He wishes to arrest this legislation now at its latest stage. He says that he desires opportunity for debate. But, Sir, has he not had this opportunity in largest measure and to excess? The Senate cannot forget how carefully and conscientiously this question has been considered: first, in a Committee of this body, who gave their best attention to it for weeks, during the last session of Congress; then

for five days and two evenings in the Senate, during which the Senator signalized his opposition; then again in a Conference Committee, the present session, where the whole subject was most thoroughly studied in every possible light; and now in this debate, running over several days, which has already occupied the Senate since the report of that Committee. Surely, if the Senator is not satisfied with the labors of the Committees of this body, he cannot complain that opportunity of debate has been wanting. Sir, he has had the opportunity, and has exercised it.

I am pained by this opposition. It is out of season. I am pained by it especially from the Senator from Iowa. I do not judge him. But he will pardon me, if I say that from the beginning he has shown a strange insensibility to this cause. He is for Liberty, but he will not help us assure it to those who have for generations been despoiled of it. Sir, I am in earnest. Seriously, religiously, I accept Emancipation as proclaimed by the President, and now, by the votes of both Houses of Congress, placed under the sanction of Constitutional Law. But even Emancipation is not enough. You must see to it that it is not nullified or evaded; and you must see to it especially that the new-made freedmen are protected in the rights now assured to them, and that they are saved from the prevailing caste, which menaces Slavery under some new form; and this is the object of the present measure.

Would you know the perils of freedmen ever since Emancipation? Listen, then, to the words of that true patriot, General Wadsworth, of New York, who, after his visit to the Valley of the Mississippi, and personal observation of the freedmen there, testified: —

"There is one thing that must be taken into account, and that is, that there will exist a very strong disposition among the masters to control these people and keep them as a subordinate and subjected class. Undoubtedly they intend to do that. I think the tendency to establish a system of serfdom is the great danger to be guarded against. I talked with a planter in the La Fourche district, near Thibodeauville. He said he was not in favor of secession; he avowed his hope and expectation that Slavery would be restored there in some form. I said, 'If we went away and left these people now, do you suppose you could reduce them again to slavery?' He laughed to scorn the idea that they could not. 'What!' said I, 'these men who have had arms in their hands?' 'Yes,' he said; 'we should take the arms away from them, of course.'"[1]

But this emphatic attestation is simply in harmony with accumulated testimony from other quarters. The freedmen, rejoicing in recovered rights, must for a while be saved from the traditional harshness and cruelty to which for generations they have been exposed. Call it protection, — call it what you will: the power of the Government must be to them a shield. And yet you hesitate.

The Senator from Iowa renews the objections he made at an earlier stage. It will not be forgotten that he most earnestly protested against the bill, as giving to persons a control of the freedman. It was shown, I think, to demonstration, that he was mistaken. But, out of deference to his sensibilities, and that nothing might seem to be wanting, other safeguards were introduced, as amendments, on his motion, or in pursuance of his suggestions. But all this is not enough to secure his favor. He objects still.

[1] McKaye's Supplemental Report to the Secretary of War, p. 24.

[illegible] as far as I understand his objection [illegible] twofold: first, that the freedman [illegible] placed under constraint, and that he is not a freeman; and secondly, that he is treated too much as an infant or a pupil. Now I undertake to say that the objection in both these forms, is absolutely inapplicable.

The freedman is treated in every respect as a freeman. Again and again in the bill his rights are secured to him. Thus, for instance, in the fourth section, it is expressly provided that "every such freedman shall be treated in all respects as a free man, with all proper remedies in courts of justice, and no power or control shall be exercised with regard to him except in conformity with law." Language cannot go further. In face of these positive words, so completely in harmony with the [illegible] [illegible] say that the freedman [illegible] a freeman just as much as [illegible] Senator himself [illegible] the [illegible] derived from the Al[illegible] [illegible] person can assail. When the Senator [illegible] danger to the freedman, he consults his imagination [illegible] hostile sentiments he has [illegible] [illegible] self [illegible] [illegible].

But the Senator complains that the freedman is treated [illegible] an infant or a pupil. How? Where? [illegible] the objectionable words. Analyze [illegible] freedmen, it is admitted, are under the [illegible] of the Commissioner. But are [illegible] under the general superintendence of the [illegible] may appeal for protection in case [illegible]? And just such protection the freedmen may expect from the Commissioner, according to his power. The Senator himself is under the superintendence of

the Presiding Officer of the Senate, whose duty it is to see that he is protected in his rights on this floor. But the Presiding Officer can do nothing except according to law; and the Commissioner is bound by the same inevitable limitations.

But there are regulations applicable to the contracts of the freedman. Very well. Why not? To protect him from the imposition and tyranny of the dominant race, it is provided that "no freedman shall be employed on any estate above mentioned otherwise than according to *voluntary contract*, reduced to writing, and certified by the Assistant Commissioner or local superintendent." Mark the language,—"voluntary contract." What more can be desired? But this is reduced to writing. Certainly, as a safeguard to the freedman, and for his benefit. Then, again, the Assistant Commissioners are to act "as advisory guardians," in which capacity they are to "aid the freedmen in the adjustment of their wages." But do not forget that the freedman is a freeman, and if he does not need such aid or advice, he may reject it, just as much as the Senator himself. Look at other clauses, and they will all be found equally innocent.

But there is the section, originally introduced on motion of the Senator from West Virginia [Mr. WILLEY], providing, that, "whenever the Commissioner cannot otherwise employ any of the freedmen who may come under his care, he shall, so far as practicable, make provision for them with humane and suitable persons, at a just compensation for their services." Here, again, are tyranny and outrage carried to the highest point. But how? The superintendence is that of the *intelligence office*, and everything done is to be "in con-

formity with law." This clause, even if it were in any respect ambiguous, must be ruled by those earlier words which declare that "every such freedman shall be treated in all respects as a free man." What more can be desired? With this rule as a guide, no freedman can suffer in rights.

The strange complaint is made, that this measure is too favorable to the freedman; and, indeed, we have been told that something is needed for the whites. Very well; let it be done. I trust that an enlightened Government will not fail to recognize its duties to all alike. Meanwhile, it is proposed that abandoned lands shall be leased to freedmen, and, if they are not able and disposed to take the lands for a twelvemonth, then they are to be leased to other persons. Reflect that the freedmen, for weary generations, have fertilized these lands with their sweat. The time has come when they should enjoy the results of their labor, at least for a few months. This war has grown out of injustice to them. Plainly, to them we owe the first fruits of justice. Besides, this provision is essential as a safeguard against white speculators from a distance, who will seek to monopolize these lands, with little or no regard to the freedman. Ay, Sir, it is too evident that it is essential as a safeguard against grasping neighbors, who still pant and throb with the bad passions of Slavery.

Mr. President, the objections are vain. The bill is not hurtful to the freedman. It is not hostile to Liberty. Its declared object is the good of the freedman. Its inspiration is Liberty. Look at it as a whole or in detail, and you will find the same object and the same inspiration. It only remains that the Senate should

adopt it, and give a new assurance of justice to an oppressed race. In the name of justice, I ask your votes.

The motion to postpone was rejected, — Yeas 13, Nays 16.

February 22d, the debate was resumed by Mr. Hale, of New Hampshire, in opposition to the report, who was followed on the same side by Mr. Lane, of Indiana, Mr. Davis, of Kentucky, and Mr. Reverdy Johnson, of Maryland. Mr. Conness, of California, spoke in favor of it. Mr. Sumner, in reply, after answering the criticisms on the bill, and adducing testimony to its importance, said: —

I HAVE read these opinions merely to bring home to the Senate, on authoritative grounds, the importance of providing some protection for this large body of freedmen, now justly looking to the National Government as their guardian. That Government has given them the great boon of Freedom. It is for us to go further, and see that Freedom is something more than a barren letter. We must see that it is a fruitful thing, of which they can avail themselves always, and which will be to them everywhere prolific of good.

Mr. President, I did not intend to enter into this discussion this morning. I hoped that a vote might be taken without further debate. I have no desire to discuss it. To my mind the question is perfectly clear. If you reject the pending measure, you voluntarily refuse to carry forward that great act of Emancipation which you have already sanctioned. I say, therefore, for the sake of Emancipation, let the report of this Committee be adopted; and I appeal to you, Senators, do not be afraid to be just.

The vote on the report of the Conference Committee stood, — Yeas 14, Nays 24; so that, though accepted in the House, it was lost in the

Senate. On motion of Mr. Wilson, of Massachusetts, another Conference Committee was ordered, consisting of himself, Mr. Harlan, of Iowa, and Mr. Willey, of West Virginia. The House, on their part, appointed Mr. Schenck, of Ohio, Mr. Boutwell, of Massachusetts, and Mr. Rollins, of Missouri. The Committee reported still another bill, placing the bureau in the War Department.

March 3d, the Senate agreed to the report without a division. In the House, after an ineffectual effort to lay it on the table, it was agreed to without a division, and the same day was approved by the President.

END OF VOLUME VIII.

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